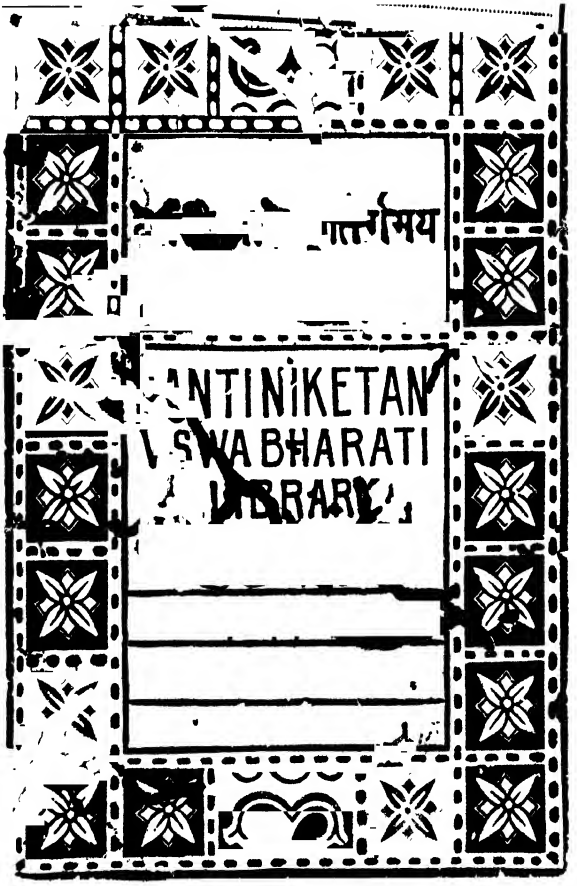
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AN INTRODUCTION TO INDIAN ADMINISTRATION

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AN
INTRODUCTION TO
INDIAN ADMINISTRATION

BY

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PREFACE

A BRIEF account has been given in the following pages of the new Indian constitution framed by the Government of India Act of 1935. That part of the Act which applies to the provinces has just come into operation. The nature of the changes that it has introduced can be fully appreciated only after a considerable experience of its working. Traditions and conventions have still to be established. This book does not claim to give an exhaustive treatment of the whole subject. Certain portions—for example those that refer to the Railway Authority and the Reserve Bank of India—have been left entirely untouched. Nevertheless I hope it will be found useful as an introduction to a more elaborate study of the new constitutional scheme.

SURAT — M. R. PALANDE

8 May 1937

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INTRODUCTORY

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§1. THE EAST INDIA COMPANY

Conquest and administration go together

THE growth of British administration in India is closely connected with the establishment of British supremacy over this vast country. The acquisition of territory naturally created the difficult problems of its preservation and governance. They had to be faced and solved by British statesmen. It is interesting to notice very briefly the important landmarks in the expansion of British authority over the Indian continent. Such a survey will give the proper background to a study of the existing Indian constitution.

The Company was a trading corporation

The conquest of India was not directly undertaken and accomplished by the British Government on behalf of the British people. It was not as if the King and Parliament of England had deliberately set out on the grand military adventure of conquering a big dominion beyond the seas. The credit for building up the British Empire in India belongs to a trading corporation known in history as the East India Company. That body was founded in England by a special royal charter issued by Queen Elizabeth in 1600. It was intended to be purely a commercial organization and was invested with the exclusive monopoly of trade in eastern waters.

Powerful Mogul emperors

During the first century of the Company's existence, India was governed by mighty emperors like Akbar, Jehangir, Shah Jahan and Aurangzeb. They inspired a wholesome fear in the mind of the foreigner. Throughout this remarkable period, the Mogul power was continuously marching towards its zenith, and Mogul splendour was luxuriously rising to its meridian. In the blaze of this glory, no contemporary Indian could have even faintly suspected that the rise of a commercial concern in distant, unknown, England was a very

ominous fatality for India. The event could have hardly excited his curiosity, much less his concern or anxiety.

The 'factories' of the Company

All the earlier efforts of the Company were directed solely to the expansion of trade. It had no political ambition or aptitude whatever. Its attention was often focussed on securing from the Indian emperors special trading privileges and concessions. The only territorial possessions of the Company at this time were the 'factories' or commercial stations in various parts of India. They were not held in the exercise of political sovereignty but rather in the enjoyment of a civic privilege. Private property could be obtained and owned by the East India Company as citizens of the Mogul Empire. No other pretensions were allowed by the Indian monarchs.

§2. THE DOWNFALL OF THE MOGUL EMPIRE

Disintegration of Mogul power

The complete disappearance of capable and powerful sovereigns from the Indian stage during the eighteenth century was a startling phenomenon. It created a dangerous void in the political and social life of India. The Mogul Empire seemed to be struck down with a fatal paralysis. The mechanism of centralized control was therefore completely deranged and clogged. Seized by the forces of disintegration, the noble and imposing edifice which had filled the Indian picture for nearly two centuries began to crumble to pieces. Internal rebellions and external invasions shattered the very foundation of its being.

Rivalry for empire and political supremacy

In this state of political confusion, there arose a keen struggle for existence and a desperate contest for supremacy. Ambitious viceroys and generals began to assert their own independence, and the subject Hindu states began to regain their freedom. The East India Company had by now finished over a century of its eventful existence. It had acquired a good deal of self-confidence, and its activities had sometimes extended beyond the narrow limits of mere trade. An intriguing political transfer-scene was being gradually enacted in its immediate environs, and it began to be deeply interested in the methods and stages of that momentous development. The prospect of acquiring territory exercised a weird charm even over the East India Company, and in the end that commercial body was inevitably drawn into the vortex of Indian politics.

An excellent opportunity for the Company

A fairly long and fruitful contact had been established between the Company and several ruling princes. Discerning observers in its service had been able to gain an accurate insight into the resources and abilities of their royal neighbours. They were astonished and delighted by the very significant revelation that law and order in many parts of India had been fundamentally sapped. It had perceptibly deteriorated into a condition of final decadence. The traditional pomp and pageantry did indeed continue. But that external emblem had ceased to be the vital reflection of an inner strength. Behind its flimsy gloss was unmistakably lurking a fatal and deep-seated weakness, a profound and portentous emptiness which clearly foreshadowed decay.

Directors were opposed to aggression

This knowledge was particularly alluring to the more militant spirits in the employment of the Company. They firmly believed that the Company could build up its own empire in India without serious difficulty. It was their keen desire to be allowed to take the fateful plunge into that stirring adventure. But the Directors in England were inclined to look upon such projects with considerable misgiving. They had very little faith in the sobriety and judgement of their Indian servants. Schemes of territorial aggression appeared to them to be not only fanciful and fantastic but full of grave risk. However, in spite of the persistent opposition of these distant masters, the men on the spot in India managed to indulge in the fascinating game of empire-building. Their unauthorized exploits proved to be extremely opportune and were crowned with brilliant success.

§3. THE CONQUEST OF INDIA

The Carnatic Wars

The first serious engagements in which the Company actively participated were fought in the Carnatic between the years 1740 and 1750. The French power was very active and influential in South India at this time and constituted a strong menace to the advance of the British Company. The French ascendancy, however, soon began to wear out. Within less than a century it had completely collapsed, and British prestige in that region was considerably enhanced.

The year 1757 is famous for the battle of Plassey. From the purely military point of view, this historic event was little more than a short skirmish. Treachery and not valour made the decisive contribution to victory. Yet, the results of this

battle were extraordinarily far-reaching and revolutionary. They were embodied in a distinct change of political masters over the province of Bengal, Bihar and Orissa. Few events in history could be found to present such a ridiculous disproportion between the insignificance of military effort and the rich exuberance of its reward.

The battle of Plassey

The battle of Buxar which followed in 1764 was remarkable for a striking coincidence. This was the first occasion on which the Company was involved in direct hostility with the Emperor of India. That august dignitary had diminished into a pale, insubstantial spectre of his former self. Still, the shadow continued to flicker erratically across the plains of the Doab. The defeat of even the titular monarch of Hindustan by the East India Company had its own psychological value to the victors. In addition, it yielded very substantial material benefits in the shape of Diwani rights which the Emperor was persuaded to grant.

The battle of Buxar

The subsidiary alliances of Lord Wellesley marked the beginning of the end of several Indian kingdoms. They were, indeed, unique instruments, as ingenious in design as they were successful in effect. The victims who submitted to their relentless operation exhibited an amazing lack of understanding and resistance. They failed to realize that protection by the British army also meant subjection to its authority. The incapacity to grasp this simple truth was full of tragic import. It betrayed a dangerous intellectual and moral exhaustion of the governing classes. They seemed to have been afflicted with fundamental debility and lethargy.

Wellesley's subsidiary alliances

In an atmosphere which had become so bleak and barren in personal merit, the task of the conqueror was immensely simplified. The Nizam, the Peshwa and all other important Maratha rulers in central and northern India accepted, sooner or later, the contracts proposed by Wellesley. By a painful irony, the very custodians and representatives of Indian freedom peacefully signed away their precious trust and treasure into the hands precisely of that enemy from whose clever encroachments they required to be carefully guarded!

Easy task of the conqueror

Lord Hastings completed the work which was so vigorously begun by Wellesley. With the defeat of the Marathas in 1818, almost the whole of India passed into British hands. Only the two frontier provinces of Sind and the Punjab had

remained unconquered, but they could not hold out long.

Completion of the conquest.

Hardinge and Dalhousie gave a final impetus to the process of absorption and annexed several provinces in different parts of the country. The red colour had spread out on the whole of the Indian map before the momentous outbreak of the great Indian Revolt in 1857.

The Indian Revolt

That Revolt was the last brave attempt to resurrect Indian independence. But it was doomed to end in utter disaster and futility. The movement did not lack vigour or energy. It attracted numerous fiery adherents. But a dominant, cohesive and intelligent leadership was conspicuously lacking. The organization and equipment of the rebel forces could not be adequate for fighting an essentially modern foe. Nor did the tumult possess that innate, volcanic strength which characterizes a popular revolution. The attempt failed to convey a universal appeal. The majority of the Indian people remained comparatively passive, and even indifferent, to the rumblings and flashes of this stormy episode.

Conclusion

Thus, after a long spell of uncertainty and conflict, the Company was successful in defeating all its opponents in India. It was, indeed, a magnificent achievement for an association of traders operating on foreign soil. The Company's victory was a glowing compliment to its dynamic activity. It was also a dismal reflection on the lack of vitality and wisdom, so woefully displayed by contemporary Indian rulers. Nor could there be a more melancholy testimony to the complete absence of political initiative and conscious self-assertion among the bulk of the Indian masses of the time.

CHAPTER II

THE GROWTH OF BRITISH ADMINISTRATION IN INDIA

A. The Period of Conquest, 1757-1858

§1. The Diwani and its Disastrous Results

§2. Parliamentary Acts

§1. The Diwani and its Disastrous Results

The conquest of the Indian empire was naturally followed by the growth of an administrative system. The two movements were parallel and were related to each other as cause and effect. The Indian empire was steadily built up by the incessant labours of the East India Company. In the nature of things, that mighty institution became a unique intermediary. It stood between the British masters of India and the mass of conquered Indians. Parliamentary action in respect of the Government of India primarily concerned the Company. Through it the Indian people were distantly touched.

The Company was a unique intermediary

The Nawabs of Bengal were completely defeated and humbled in the battles of Plassey and Buxar. However, the office of Nawab was not immediately abolished. All its powers were transferred, directly or indirectly, to the hands of the victors. The maintenance of peace and order became the Company's responsibility. To it was added in 1765 the duty of collecting land revenue. In that year, the rights of the Diwani were secured for the Company by Lord Clive from the fugitive emperor, Shah Alam. To fulfil the obligations of the office of Diwan, Clive devised the method which is known as 'Double Government'. These were the earliest efforts of the Company in the exercise of political authority. They marked the beginnings of its administrative career.

Clive's Double Government

Unfortunately, the servants of the Company took an extremely perverse view of their duties. As agents of the rulers, they were invested with certain powers of control and coercion. Those powers were intended to serve the needs of a corporate and civilized life. Their exercise could be justified

only if it was in furtherance of public welfare. In actual practice, however, that exalted social purpose was completely forgotten. To the vulgar minds of the Company's servants, the opportunity to govern Bengal was only a glorious license to gorge themselves with fabulous riches. They resorted to shameless extortion and oppression for the satisfaction of their unbounded greed.

Tyranny of the Company's servants

The helpless population of Bengal was therefore subjected to cruel tortures. The police and the magistracy became the most violent offenders against law and order. The guardians of justice and civil liberty actually became the annihilators of those vital principles of civic life. The mechanism of government was turned into a deadly instrument of terrorism. The anti-social instinct of the criminal and the mercenary was unhappily joined to absolute power. It was a ghastly combination which produced very tragic results.

Sufferings of the people of Bengal

The British public was gravely perturbed by the sickening news about various occurrences in Bengal. Its pride was hurt when the British name came to be associated with atrocious crimes. The English 'nabobs', as the servants of the Company were contemptuously called, returned from India with heaps of tainted wealth. The bloated and unseemly pictures of these retired but not too tired administrators filled the Englishman with indignation and horror. Their enormous wealth was the most tangible and convincing evidence of their guilt. And they indecently paraded that evidence before a disgusted public.

Shock to the British public

The interest of Parliament was therefore keenly aroused. It felt called upon to issue elaborate instructions to the Company in the matter of Indian governance. The existing chaotic conditions had to be ended at all costs. During the course of nearly a century that elapsed after the grant of the Diwani, several enactments were passed by Parliament. Their object was to regulate and systematize the operation of the governmental machinery in India. A definite shape came to be gradually given to the administrative structure of the land.

Action taken by Parliament

§2. PARLIAMENTARY ACTS

The earliest of these measures was the famous Regulating Act, which was passed in 1774. It took the first steps in

setting up a unified system of administration for the whole of British India. A Governor-General was appointed to superintend and control the Governments of the different presidencies. He was given the assistance of an Executive Council. A Supreme Court of Judicature, independent of the executive, was also established. The main skeleton of the present Indian Government can be said to have been originally provided by this important statute.

The Regulating Act

Ten years later came Pitt's India Act. The Company had suffered many reverses during the preceding decade. Its fortunes in India were at a very low ebb. Parliament felt convinced that a much stricter supervision over the Company's management of Indian affairs was absolutely essential. A Board of Control was therefore established for that purpose in 1784. It was invested with full powers of superintendence, direction and control over the Indian Government. The executive authority of parliamentary representatives was thus imposed upon the officials of the Company.

Pitt's India Act

The monopoly of eastern trade, granted as a special favour to the East India Company in 1600, soon became the target of severe criticism in England. In the circumstances of the nineteenth century, it was condemned as an offensive and intolerable anachronism. The conviction even began to grow that the Company itself, with all its brilliant services in the past, was fast becoming a mischievous misfit in a grand imperial picture. The Act of 1813, therefore, deprived the Company of its trading monopoly. Twenty years later its trading activities were stopped altogether.

Abolition of trading monopoly

The Act of 1833 introduced a highly centralized system of administration. It added a separate Law Member to the Governor-General's Executive Council. At last, the shock of the Indian Revolt of 1857 precipitated the final crisis. It dissipated all the lingering doubts in the Englishman's mind about the wisdom and justice of abolishing the East India Company. The extreme step of dissolving that stupendous corporation was taken in 1858. The Government of India was then transferred from the Company to the Crown and Parliament of Britain. A separate Cabinet Minister, known as the Secretary of State for India, was specially appointed to discharge the new responsibility.

Abolition of the Company

B. The Policy of Association

§1. THE CHANGED ATTITUDE OF INDIANS §2. WESTERN EDUCATION AND THE RISE OF INDIAN NATIONALISM §3. MAIN FEATURES OF THE NEW POLICY §4. GROWTH OF THE LEGISLATURE §5. INDIA'S DISSATISFACTION WITH THE MORLEY-MINTO REFORMS

§1. THE CHANGED ATTITUDE OF INDIANS

No mention of India's political rights

There was one remarkable gap in all the legislation that was passed by Parliament prior to the year 1861. None of its Acts contained the slightest reference to the political rights or status of the Indian people. The millions who were governed were not considered important enough to deserve any specific recognition at the hands of the parliamentary legislator. They were simply ignored in the scheme of the Indian constitutional structure.

Indians reconciled to the conquest

By the year 1861, the conquest of India was complete. What was more important, the new order was accepted, more or less, as an accomplished fact by the majority of Indians. They appeared to have bowed to the inevitable. The defiant and standing challenge of the vanquished to the supremacy of the victor gradually calmed down to an inaudible murmur of protest. A spirit of resignation and acquiescence seemed to pervade the whole land.

Policy of conciliation

A generous gesture from the conqueror at this psychological moment was bound to produce a very soothing effect. The edge of hostility could be turned by a display of friendliness and sympathy. It was also necessary that the rulers should be fully acquainted with the trend of opinion among their subjects. The old Indian methods of ascertaining what the people felt and thought appeared rather crude and out of date. Nor could they be properly assimilated and employed by a foreign bureaucracy.

§2. WESTERN EDUCATION AND THE RISE OF INDIAN NATIONALISM

Results of western education

There was another factor of great importance. After the advent of British rule, and more particularly after Macaulay's famous Minute of 1835, the doors of western education were thrown open in India. Important centres of modern learning, like colleges and universities, were started in various provinces. They gradually unfolded an entirely new world

before the eager eyes of the dispirited Indian people. It was an exhilarating picture, depicting a type of moral and material glory which was wholly unprecedented.

New ideals and ambitions

The ideals embodied and inculcated in the new learning were appreciably different from what the Indian had been accustomed to respect in the past. The discoveries of the physical sciences and the practical use made of them were astounding novelties. They brought lovely visions of earthly happiness and comfort. The social sciences also exhibited a striking and forceful growth. They began to propound dogmas which were hitherto almost completely unknown. Their interpretation and solution of the problem of human inequality became more emphatically rationalistic and fearless.

Inspiration from western history

The history of western countries had also its own inspiring message to a fallen nation. The romantic stories of the struggle for popular freedom in countries like England, France and America caused deep stirrings of the soul in a politically backward people. Liberty, equality and democracy became the most vital elements in the new ideology. The spread of those doctrines gave a new orientation to social and political thought in India. It supplied a more refined sense of values for judging human institutions and human relations.

The Indian National Congress

In the light that was thus cast by western literature and philosophy, Indians began to discover themselves. They regained their self-consciousness and sensibility. An intellectual unrest soon began to be distinctly visible in many parts of the country. It was symptomatic of a general awakening and revival. The formation of the Indian National Congress in 1885 was the climax of the growing internal commotion. The Congress expressed and focussed Indian discontent against the existing conditions. The Indian Renaissance eloquently manifested itself through its impressive medium.

§3. MAIN FEATURES OF THE NEW POLICY

India considered unfit for self-government

Parliament had to take cognizance of this psychological transition. Its attitude had to be somewhat adjusted to the new situation. This did not mean giving countenance to the Indian demand for self-government which soon came to be vigorously put forward by Indian leaders. In fact, it was summarily rejected. It was felt by the British that India was still wrapped up in a stagnant and ludicrous medievalism and

was therefore thoroughly unfit for democracy. To speak of parliamentary institutions as being either demanded by or conceded to such a backward country was held to be an outrageous impertinence.

Smaller concessions

But the denial of self-government did not make it necessary to withhold smaller concessions. The Indian may not be entrusted with power over the administration of his country. But he could be conveniently brought into closer touch with it. His opinions on some of the simpler aspects of administration could be invited. Explanations and replies could be officially given to points raised in his criticism. A common ground could be created on which the official and the non-official could meet more frequently and attempt to influence each other in public affairs.

Opportunities for contact

The policy of association involved the creation and multiplication of contacts but not the transfer of political control. An opportunity was given to a few Indians to be the interpreters of the public will. They were officially recognized as the exponents of popular opinion. It was a new dignity and status which could appeal both to the head and to the heart of the Indian. In addition, it could also serve as a harmless channel for the ventilation of his grievances. A little scope was thus provided at once for the hollow gratification of personal ambition and for the lawful expression of discontent against the actions of the Government. The main feature of this policy was the introduction of a small non-official element in the central and provincial Legislative Councils.

§4. GROWTH OF THE LEGISLATURE

Legislatures were not independent

Constitutionally speaking, the legislature had no independent existence till the Government of India Act of 1919. The basic concept of its formation militated against such a claim. The Legislative Council was merely an expansion of the Executive Council. Additional members were appointed to the latter when the enactment of laws was necessary. With a clear majority of official members, the law-making body became only an instrument in the hands of the executive authority. Not even remotely could it serve as a real check on the vagaries of an irresponsible Government.

The structure of the Legislative Council was extremely unsatisfactory and defective. Till the Act of 1892, it had not a single elected member. It was not the choice of the people

but selection by a foreign bureaucracy that made the Indian legislator. He lacked representative character. It was in the Act of 1909 that the principle of election was openly avowed as a necessary feature of India's constitutional progress. But the total number of elected representatives that it provided for all the legislatures in India, both central and provincial, was miserably small, amounting to just 135. There was a clear majority of official members in the central legislature and also in most of the provincial legislatures.

Their undemocratic structure

The powers of these bodies were extremely meagre and ineffective. All laws required their sanction, but it was, of course, impossible that a measure proposed by the Government could be thrown out by them. The right of asking questions and moving resolutions was restricted. They could discuss the budget and divide the house on some motions that were allowed on it. But not a rupee of the income or expenditure of the Indian Government was placed under the direct control of the legislature.

Their inadequate powers

§5. INDIA'S DISSATISFACTION WITH THE MORLEY-MINTO REFORMS

The Morley-Minto Reforms, which were embodied in the Act of 1909, were considered to be a fairly developed product of the policy of association. But they caused bitter disappointment among Indian nationalists. Their net result was the grant of a little latitude to the non-official Indian to criticize and to express disapproval of some aspects of Government policy. He was even allowed to make a few constructive suggestions. But the very exercise of that privilege brought humiliation and pain. Even the most reasoned and temperate criticism of bureaucratic actions proved to be merely a cry in the wilderness. It was treated with scant courtesy. The Government could disregard the opinions of their critics with perfect ease and impunity.

Futility of non-official criticism

The whole project suffered from such severe limitations and inadequacies that even confirmed optimists were completely disillusioned by actual experience of its working. The satisfaction felt by them in the beginning was short-lived. It was realized that the totality of the legislature's powers amounted to little more than the dubious privilege of an occasional and inconsequential debate on a few public questions. And even that depended upon the pleasure of the Government. There was inevitably

A disappointing scheme

an air of mocking unreality about the proceedings of the Legislative Councils.

Its misleading appearances

Under such depressing conditions, the parliamentary garb was not only deceptive but ridiculous. The collective appearance of the legislature was a contemptible camouflage for the reality of representative democracy. Even sober-minded politicians had to confess to a sense of overwhelming futility in this tepid and disheartening atmosphere.

CHAPTER III

THE MONTAGU-CHELMSFORD REFORMS AND THE BEGINNINGS OF RESPONSIBLE GOVERNMENT

§1. THE GREAT WAR AND INDIA'S SERVICES §2. THE ANNOUNCEMENT OF 20 AUGUST 1917 §3. THE MONTAGU-CHELMSFORD REPORT AND THE ACT OF 1919 §4. EVENTS BETWEEN 1919 AND 1935 §5. TWO BRANCHES OF THE INDIAN ADMINISTRATIVE MACHINERY

§1. THE GREAT WAR AND INDIA'S SERVICES

Outbreak of the Great War

WITHIN five years of the passing of the Act of 1909, an unexpected and overwhelming catastrophe descended upon the world. The Great War broke out in 1914. It was a tremendous upheaval which affected the course of human history. Every phase of national and international life was profoundly influenced by the convulsive forces that were unchained in the wake of this terrific cyclone. A revolutionary social philosophy swept away the older ideals and also those individuals and institutions who typified and embodied them.

Services rendered by India

As a member of the British Empire, India was called upon to fight on the side of the Allies. The response was quick and enthusiastic. All the resources of the country were placed at the disposal of the British Government. India's contribution to the War in men, material and money was remarkably generous. The great magnitude of her gifts and the unswerving loyalty of her people created a profound impression on the British nation. Admiration and gratitude were universally expressed for the spirit of friendly co-operation that was displayed.

Threat to civilization

The Great War was described by the Allies to be a sort of crusade against the monsters of injustice, wrong and tyranny. It was said to have been provoked by a grave menace to human civilization. The right of the smaller and weaker nations to exist had been impudently challenged. National honour and integrity had been recklessly violated. Liberty, equality and democracy, which constitute the very essence of civilized existence, were threatened with complete ruin. They had

to be rescued from the violent attacks of unscrupulous aggressors and despots.

Ideals of the Allies

It was proclaimed by Britain and the Allies that their entry into this horrible war was not instigated by any selfish motives. They claimed to be pursuing a noble ideal at a tremendous sacrifice. Everything that was good and pure in human life had to be saved from destruction. All forms of unnatural coercion and slavery had to be extinguished from the human world. The fight was therefore supposed to be conducted for an altruistic purpose. All the moral implications of the Allied mission were expressively epitomized in the single word 'self-determination'. With that inspiring slogan on their lips, warriors and statesmen bravely set out to renovate a world in ruins at the end of the war.

India's status of political dependence

India was also participating enthusiastically in the campaign against a barbaric foe. Her soldiers were laying down their lives in defence of the freedom of other nations. Yet, curiously enough, her own political status was far from satisfactory. She was a mere dependency, held in the strong grip of a powerful foreigner. The right of self-government was emphatically denied to her citizens. A country which was called upon to dedicate men and money for the emancipation of mankind was itself compelled to live in political and economic bondage. The incongruity of such a position was both glaring and poignant.

§2. THE ANNOUNCEMENT OF 20 AUGUST 1917

Agitation for Home Rule

A vigorous agitation was naturally started in India for the assertion of her legitimate claims to internal freedom or to Home Rule. Britain could no longer refuse to entertain them. To do so would have been absurdly inconsistent with its altruistic professions. Nor could the substantial war services of India be lightly ignored. The combination of these circumstances introduced a healthy change in the British attitude towards the Indian demand.

India's political goal defined

The Indian public had been long insisting that the final goal of British policy in India should be clearly defined. But Parliament had not deemed it necessary to accede even to that modest request. It required the stupendous shock of a devastating war to draw the British into an active compliance with the Indian demand. On 20 August 1917, the Secretary of

State for India made a momentous declaration in Parliament on behalf of the British Government. It contained an authoritative statement of the objective of British policy in India.

Mr Montagu's announcement

The following important extracts will explain the nature of the ideal as contemplated in the announcement. 'The policy of His Majesty's Government is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. . . . The progress in this policy can only be achieved by successive stages. The British Government and the Government of India . . . must be the judges of the time and the measure of each advance.'

No immediate grant of self-government

It will be easily seen that Parliament did not propose to introduce immediately a sweeping change in the method of Indian governance. The mechanism of bureaucratic control was not to be suddenly transformed into responsible government. The process was to be gradual, and its tempo was to be properly regulated. In fact, to the Indian mind the parliamentary definition of India's political destiny appeared to be disfigured by many conditional and restrictive clauses. It was very annoying to find that the ideal was encumbered with qualifications.

Importance of the announcement

However, in spite of these defects, the announcement was a distinct landmark in the history of British administration in India. It signified a new constitutional era. For generations together, the Englishman's faith had been pinned on the efficacy and sufficiency of the policy of association. He was particular about providing an effective, even a paternal, government *for* the Indian people. But he could not bring himself to agree to the concept of government *by* the Indian even to a small extent.

Principle of responsibility accepted

Now for the first time it was decided that the Indian was to be allowed to wield political power, in his own right. He was to be given a small opportunity to taste the pleasures and responsibilities of parliamentary institutions. The formation of responsible Ministries was to be a new feature of Indian administration. The subordination of the Indian executive to the Indian legislature was no longer ruled out

as a fantastic and foolish ambition, never to be realized in practice.

The Secretary of State visits India

Another important decision was also announced at this time. The Secretary of State was asked to pay a special visit to India and make personal inquiries concerning its constitutional future. The Indian problem appeared to be complicated and therefore incapable of a ready solution. The Government of India had to be consulted at every stage. A full and frank exchange of views between Indian leaders and Parliament's representative was also considered to be very desirable. It was expected to be immensely helpful in clarifying the issues.

§3. THE MONTAGU-CHELMSFORD REPORT AND THE ACT OF 1919

Mr Montagu's arrival in India

Mr Montagu, who was then Secretary of State, arrived in India in the winter of 1917 and stayed for several weeks. In company with the Viceroy, Lord Chelmsford, he visited important cities like Bombay, Madras, Calcutta and Delhi. Evidence was invited from individuals as well as from associations. Numerous interviews were granted and deputations were received. Many personal contacts were established. The material thus collected was carefully examined and studied. The Secretary of State and the Viceroy were able to form their own impressions of the kind of reform in the Indian administrative structure which in their opinion could be recommended.

The Montford Report

The tangible result of the collaboration of these two authorities was the famous document which is popularly known after its writers as the Montagu-Chelmsford or the Montford Report. It contained a brief historical survey of the Indian administrative system and a lucid exposition of its growth. Then followed a discussion of the different proposals for reforming the existing system. The authors put forward a series of recommendations of their own for acceptance by Parliament. They were intended to introduce suitable changes in the governmental machinery in India.

The Act of 1919

The publication of this historic Report was followed by the drafting of a bill on the lines suggested in it. A Joint Parliamentary Committee was appointed to discuss its clauses in detail. With the alterations made by the Committee, the bill was again placed before Parliament and was finally passed as an Act

in 1919. The new scheme actually began working in the beginning of 1921.

A transitional measure

This Act was an attempt to implement the promise contained in the declaration of 20 August 1917. It was essentially a measure which created and served the needs of a transitional period. The purely bureaucratic system was to be deliberately modified but not to be wholly abolished. The principle of political responsibility was to be definitely introduced, but the extent and scope of its action were to be palpably limited. The Indian constitution was to be cut from its old moorings. But the final destination of responsible government was to be reached only after several intermediate stages had been slowly passed.

Combination of contraries

The Montford Reforms were the earliest of these halting points. The changes brought about by their provisions inevitably resulted in the formation of a hybrid structure. An irresponsible executive was placed partially at the mercy of a popular legislature. Bureaucracy and democracy were strangely mixed up and closely associated with each other. It was an unnatural juxtaposition of contraries which was bound to produce friction. In fact, the consequences were clearly foreseen and special weapons were provided to remove the difficulties that were inherent in the working of such an odd combination. The Act of 1919 embodied all the peculiarities and imperfections that belong to a stage of transition.

Central and provincial subjects

There were three main concepts on which the new scheme was broadly based. Firstly, the central and provincial spheres were demarcated and distinguished from each other with greater clarity and precision. A larger measure of independence was granted to the provinces. The list of central subjects contained items which required a uniformity of policy and control. The list of provincial subjects contained items in which freedom and initiative could with advantage be left to local authorities.

Dyarchy in the provinces

Secondly, the province was considered to be the most suitable unit for beginning the experiment of self-government. The provincial subjects were divided into two groups. The Reserved group was to be administered by an irremovable Executive Council as before. But the Transferred group was given for management to a new type of officials called Ministers. They were selected from among the elected members of the provincial

Legislative Council and were made fully responsible to that chamber for their actions and policy. The Legislative Councils themselves were greatly enlarged in size and were provided with a substantial majority of elected members. The franchise for their election was considerably lowered. A part of the provincial budget was placed under their control.

The central legislature improved

Thirdly, an attempt was made to give a more effective voice to the public in the conduct of the Central Government, though no element of responsibility was introduced in this sphere. The number of Indians in the Executive Council was increased to three. The central legislature was also constituted on a more democratic basis. It was given the bicameral shape. The upper house was indeed extremely oligarchical in character and retrograde in its outlook. But the lower house was expected to be more representative of Indian political talent. A wider franchise was prescribed for its election. A part of the central budget was made subject to its vote—an important innovation. The Legislative Assembly was given many opportunities to expose and criticize the attitude of the central executive.

§4. EVENTS BETWEEN 1919 AND 1935

Discontent in India

The introduction of the Montford reforms synchronized with a very inauspicious combination of circumstances. The infamous and obnoxious Rowlatt Act was passed in the teeth of popular opposition. It was followed by the proclamation of martial law in the Punjab and the dismal Jallianwalla Bagh tragedy. The Muslim public was also considerably agitated over the settlement of the Khilafat question. The discontent aroused by the Act of 1919 was naturally aggravated in such an atmosphere of irritation and anger. In fact, all this varied disaffection produced a cumulative effect. It contributed to the rise of a mighty political ferment which found vigorous expression in the Non-co-operation movement started by Mahatma Gandhi in 1920.

The Reforms denounced

The Reforms Act was denounced by nationalist opinion in India as being thoroughly inadequate, unsatisfactory and disappointing. Even the first Legislative Assembly, which was composed entirely of Moderates and Liberals, passed a resolution as early as September 1921, demanding an immediate revision of the new constitution. Three years later, some prominent leaders

of the Congress entered the legislatures, and, under the able guidance of Pandit Motilal Nehru, the Legislative Assembly passed an important resolution. It urged the Government to convene a Round Table Conference of Indians and Englishmen to formulate a scheme of responsible government for India.

The Muddiman Committee

The Government then appointed a committee under the presidency of Sir Alexander Muddiman to inquire into the working of the Reforms. Its report was not unanimous. The minority was composed of influential Indians who had actually worked the Reforms and could therefore speak from personal experience about them. In a valuable minute of dissent they pointed out the inherent defects of the mechanism of dyarchy and unequivocally condemned the whole scheme. On the other hand, the majority, which included Government officials, made certain minor suggestions for improving the working of the system. The Government tabled a resolution in the Assembly for the consideration of these suggestions. The leader of the Swaraj Party moved an amendment to that resolution, reiterating the necessity of holding a Round Table Conference. The amendment was carried against the Government.

The Simon Commission

The Act of 1919 had provided for the appointment of a Statutory Commission at the end of ten years after it was passed. The Commission was intended to make inquiries into the system of government, the growth of education, and the growth of responsible institutions in India, and to recommend an extension, modification, or restriction of responsible government. Ordinarily, it would have been appointed some time about the year 1930. But, in response to the Indian agitation, His Majesty's Government decided to anticipate that date. In November 1927 they made the announcement that a Statutory Commission under the presidency of Sir John Simon would be immediately sent out to India.

The boycott

Unfortunately, a step which was intended to pacify Indian unrest only succeeded in producing just the contrary result. It alienated and embittered Indian feeling to a greater extent than before. Parliament thought it proper not to include a single Indian in the personnel of a Commission which was specially asked to investigate into and sit in judgement upon the political aptitudes, achievements and aspirations of India. This deliberate exclusion was extremely humiliating to Indian self-respect and was keenly resented by all. The Simon

Commission was boycotted even by the Indian Liberals. Its report, which was published in 1930, was received with a chorus of condemnation.

The Labour Government

In the meantime, there was a change of Government in England. The Labour Party was established in office if not in power. Great expectations were raised in India on account of its advent. It had frequently professed sympathy with Indian ambitions. The Labour Ministry soon decided that a Round Table Conference should be convened to discuss the constitutional future of India. Indian leaders were invited to participate in its deliberations and to help in the framing of a suitable constitutional structure.

The Civil Disobedience Movement

However, this decision did not convey the clear assurance that the ultimate object of Parliament was to confer Dominion Status on India. Indians were ardently looking forward to a declaration of this kind. To them, the realization of that ideal was a simple birthright. It was beyond controversy and dispute. Therefore, its deliberate omission from the announcement about the Round Table Conference was construed as an insult to the Indian nation. The Indian National Congress declined to take part in its proceedings and launched the Civil Disobedience Movement in right earnest. Thousands of Indian men and women intentionally broke certain laws and thus courted arrest and imprisonment. The country at last came to be governed by a series of ordinances.

The Gandhi-Irwin Pact

The first Round Table Conference was opened in London by King George V in the second week of November 1930. Its deliberations lasted for ten weeks. After it had dispersed, a vigorous effort was made in India to bring about a reconciliation and truce between the Government and the Indian National Congress. Most of the imprisoned leaders and their followers were released. Lord Irwin, the Viceroy, held prolonged conversations with Mahatma Gandhi and a settlement satisfactory to both parties was ultimately reached. The terms of the agreement were officially published by the Government of India, and the Non-co-operation movement was called off. Mahatma Gandhi later on proceeded to England to attend the second Round Table Conference which was convened towards the end of 1931.

But, during this interval, an unexpected change had taken place in the British political situation. The Labour Party was disrupted. A National Government was specially brought

into existence to manage an economic crisis. It was predominantly conservative in character and was not particularly enthusiastic about India's political advance. There was also another very disquieting factor. The differences between Hindus and Muslims appeared to be quite irreconcilable. An agreed solution of the communal problem was found to be impossible. Nor could it be otherwise in the peculiar environment of a conquered country in which the will and the interests of the supreme overlord are neither inactive nor negligible forces. The second Round Table Conference therefore ended inconclusively. The communal question was referred to the arbitration of the British Prime Minister.

The Second R.T.C.

In the meantime, circumstances in India had taken a very unhappy turn. After the return of Mahatma Gandhi from England at the beginning of 1932, the Civil Disobedience Movement was revived, and the leader and a number of others were sent to jail. The Prime Minister's award on the communal question was published a few months later, and the world was staggered by the announcement that Mahatma Gandhi had decided to fast unto death as a protest against some of its clauses which referred to the Depressed Classes. There was naturally a great stir. Hurried negotiations were held behind prison bars and ultimately an agreement was reached. It was embodied in what has been since known as the Poona Pact. The Communal Award was modified accordingly and the historic fast came to a happy end.

The Communal Award and the Poona Pact

Late in 1932, the third Round Table Conference was convened in London. It considered the reports of various sub-committees appointed previously and formulated its own recommendations before dispersing at the end of 1932. They were considered by His Majesty's Government, and in March 1933 the latter published a White Paper containing their own proposals. These were considered by a Joint Committee of both the Houses of Parliament in consultation with Indian representatives. After the publication of that Committee's report a bill was introduced in Parliament to give concrete shape to the net achievement of such prolonged investigations and discussions and to translate them into practical reality. The bill was finally passed as an Act in September 1935.

The Act of 1935

Thus, an eventful chapter in recent constitutional history came to a close. Its inordinate length had completely

exhausted the patience of Indians. The sending out of the Simon Commission three years earlier than the appointed date was not accidental. It was advertised as a special gesture of Parliament's sympathy with the Indian desire for a speedy revision of the Montford constitution.

Inordinate delay

Yet, by a grievous irony, not less than ten years were to elapse before any tangible results of these efforts were actually experienced. The tantalizing character of such a long period of suspense was disagreeable enough. Unfortunately, it was not compensated for by the genuinely superior quality and the generous proportions of the final gain. The Act of 1935 is full of reactionary provisions and has therefore evoked severe condemnation throughout the country.

§5. TWO BRANCHES OF THE INDIAN ADMINISTRATIVE MACHINERY

Unlike the pre-British conquerors of India, the British did not abandon their own country and permanently settle in the conquered land. To the British, Great Britain is the vital centre of all activity. That little island is the mighty point of convergence of a vast empire. The British rule over India from Britain. The Indian constitutional structure has therefore to take cognizance of two distinct entities. One is the country which is to be governed and the other is the nation which governs it. The two stand apart from each other. The distance between them is not only political and racial. It is also geographical.

Necessary dualism

The ultimate authority is naturally exercised by the sovereign master from his own seat and home. He appoints an agent to function on his behalf and to be in the closest touch with him. In this agent are vested the final powers of supervision and control. He reflects the opinions and moods of the British people. On the other hand, the work of actually governing the conquered territory is entrusted to another agency. It is constituted by a body of officials who have to live and work in India itself. They are the men on the spot who are in direct contact with the subject population.

Two kinds of authority

The Indian administrative machinery is therefore divided into two branches. One operates in India and is of course much the bigger in size. It is composed of the Government of India and the Provincial Governments. The other operates in England and

Two branches of government

serves as the instrument for enforcing the will of the sovereign. It consists of the Secretary of State for India, his Advisers and their establishment known as the India Office. For clear understanding, it is best to make an independent study of each group and also to get a correct idea of their mutual relations.

PART II

INDIAN ADMINISTRATION IN ENGLAND OR THE 'HOME' GOVERNMENT

CHAPTER IV

THE SECRETARY OF STATE FOR INDIA

§1. QUALIFICATIONS AND APPOINTMENT §2. RESPONSIBILITY TO THE CABINET §3. RESPONSIBILITY TO PARLIAMENT §4. THE UNDER-SECRETARIES AND THE INDIA OFFICE §5. SALARY AND EXPENSES §6. POWERS AND FUNCTIONS §7. RELATIONS WITH ADVISERS §8. RELATIONS WITH THE GOVERNOR-GENERAL

§1. QUALIFICATIONS AND APPOINTMENT

Creation of the office

THE East India Company was abolished in 1858. Control over Indian administration was vested thereafter in the Crown and Parliament of Britain. For the adequate and efficient fulfilment of those responsibilities, a new post of a principal Secretary of State was created. To him were transferred all the duties and functions that were formerly performed by the Court of Directors and the Board of Control. Like all British Ministers, the Secretary of State for India is a representative and servant of Parliament. Through him are exercised the sovereign powers of that body.

He must be a member of Parliament

The Secretary of State must be a member of Parliament, sitting either in the House of Commons or in the House of Lords. On very rare occasions it may happen that he is nominated to that office even when he is not a member of either House. But it is distinctly laid down that within six months of such a nomination he must find a seat for himself in the legislature. This may be done in two ways. A sympathetic and obliging friend may purposely resign his own seat in the House of Commons and the Secretary of State may then successfully contest the vacancy. Or he may be created a peer and elevated to the House of Lords.

He is also in the Cabinet

The Secretary of State is not only a member of Parliament but is also given a place in its inner council which is known as the Cabinet. Membership of the Cabinet is an exalted political status. Its attainment necessarily implies the possession of several outstanding qualities. All governmental powers in the British democracy are concentrated in the Cabinet. It

is an assembly of some of the most eminent, intelligent and popular political leaders in the country. They belong to the same party and are bound to each other by an affinity of opinions and principles. The Cabinet can be aptly described as the *primum mobile* of the British constitutional mechanism.

Qualities of a Cabinet Minister

A Cabinet Minister of England may not be a man of academic sparkle and erudition. He may not have mastered the secrets of the art of accumulating wealth. But he must be gifted with strong common sense. His mind must be alert and his understanding quick and clear. His intellect must be excellently trained to grasp essential facts in all their bearings. His vision must be distinguished by living freshness and wide comprehension which are generally conspicuous by their absence in bureaucratic officials. He is not required to be an expert in the narrow sense. But he must be able to appreciate the services of experts and to assimilate the precious fruits of their long experience and labour. He has not to operate the engine but to regulate the direction and speed of its journey.

Qualifications of the Secretary of State

The fact that the Secretary of State for India is one of the foremost constituents of the British Cabinet is therefore significant. It automatically prescribes the qualities which the holder of that post must possess. He must have considerable reputation and influence in the public life of Britain. He must be closely associated with a political party and prominent in its counsels and leadership. It is not necessary that he should have acquired a first-hand knowledge of India and its problems. He is not supposed to have made a personal study of the history and geography of India or of its political and economic conditions before he assumes office. His general intellectual training and the assistance of experienced permanent officials are expected to give him a proper perspective in the performance of his duties.

His appointment

The distribution of portfolios among members of the Cabinet is effected principally on the initiative of the leader of the party in power. It is usually done in consultation with the important party luminaries. The maximum of efficiency is aimed at in selecting different individuals for different tasks. The choice of the Secretary of State for India can be said to be made chiefly by the Prime Minister after an exchange of views with his prominent associates.

§2. RESPONSIBILITY TO THE CABINET

Previous consultation with colleagues

Like all Ministers in the Cabinet, the Secretary of State is responsible, in the first instance, to his immediate colleagues. He must keep them adequately informed of all new lines of action that he may propose to adopt in his department. The wider aspects of his policy must be fully explained to them and discussed with them. Their assent and support are required for all important innovations. No decision can be announced as the decision of His Majesty's Government unless agreement has been previously reached about it among the majority of the Cabinet. Then only does it become the collective responsibility of the whole unit.

Differences with them

The Cabinet exists and functions as an indivisible entity. Its members profess the same political faith and owe allegiance to the same political party. They are heirs to a common legacy of the same traditions and philosophy. Disagreement between them would therefore pertain rather to details and degrees than to fundamental principles. However, sometimes the unexpected may happen. Serious differences may arise between the Prime Minister and any of his colleagues or between one Minister and the rest of the Cabinet. In 1923, for instance, Mr Montagu incurred the intense displeasure of his chief, Mr Lloyd George. As recently as 1935, the angry repudiation by the Cabinet of the Hoare-Laval Pact was equivalent to a severe condemnation of the Foreign Secretary, Sir Samuel Hoare.

Their consequences

In such exceptional cases, the only honourable alternative for a dissenting member is to resign his office. He must obviously part company with political comrades when he has ceased to believe in their politics. Both Mr Montagu and Sir Samuel Hoare, in the examples quoted above, tendered resignation of their ministerial office as soon as a grave divergence was discovered between them and their colleagues. The Prime Minister and other members of the Cabinet can compel an intractable companion to make his immediate exit from the official fold. No violently discordant element can be tolerated in the innermost council of the state.

§3. RESPONSIBILITY TO PARLIAMENT

As has been stated before, the relations of the Secretary of State with Parliament are those of servant with master.

Subordination to Parliament

He is essentially the interpreter of the parliamentary will and the instrument of its authority. His obedience to that body is absolute and complete. He continues to be in office only so long as Parliament desires that he should do so. Even a faint indication of Parliament's disapproval of his conduct is sufficient to precipitate his downfall. Any member of that chamber can put him questions. He must supply all information and give satisfactory explanations. His actions can be subjected to the most searching criticism. In the last resort, he is liable to dismissal by a vote of the legislature.

Tenure of office

In consistency with British parliamentary practice, the Secretary of State for India, as a member of the Cabinet, comes into office with his party and goes out with it. The Cabinet works on the principle of joint responsibility. It remains in power only so long as it enjoys the confidence of Parliament. There can be no fixity of tenure under such a system. The life of Parliament is prescribed to be five years, unless it is dissolved earlier. So the maximum period of office that the Secretary of State can enjoy at a stretch is not more than five years. In actual practice it is found to be much less because it is determined by the exigencies of British politics.

§4. THE UNDER-SECRETARIES AND THE INDIA OFFICE

Two assistants

The Secretary of State for India, like other Cabinet Ministers, is helped in his work by two assistants who are known as Under-Secretaries. They are highly placed officials, but their constitutional position and their equipment are fundamentally different from each other. One fills a political, the other, a bureaucratic role. The purposes they serve are not identical but mutually complementary.

The Parliamentary Under-Secretary

In qualifications and status, the Parliamentary Under-Secretary is a miniature of his chief. They are similar to each other in almost all respects, except in the degree of eminence and seniority. The Parliamentary Under-Secretary must be a member of Parliament. Whenever possible, he is selected from that House of which the Secretary of State is not a member. He has to expound the policy and actions of the Government on the floor of the legislature and to do all such work as may be assigned to him by the Secretary of State. He forms part of the Ministry, though not of the Cabinet,

and has to accept or to relinquish office according as his party decides and directs. In fact, the Parliamentary Under-Secretaryship is held by capable and ambitious juniors. It frequently serves as a stepping-stone to higher office.

The Permanent under-Secretary

The Permanent Under-Secretary belongs to a different category. He is not a politician and is debarred from being a member of Parliament. He is an official of the Civil Service and is guaranteed fixity of tenure during good behaviour. At the end of a long and distinguished service in his department, he is selected to be its executive head. He controls all the secretariat staff and looks to the safety and orderly arrangement of the papers and documents in his charge. The happenings in his administrative sphere are intimately known to him. Information about facts and statistics is always ready in his possession.

His usefulness

The Secretary of State is an intelligent but ignorant stranger to his department. He is an ever-changing factor in the governmental picture. The period of his office is precarious. Under such circumstances, the continuity and length of service of the Permanent Under-Secretary are of inestimable advantage. He becomes an unfailing encyclopedia of expert knowledge which the political superior can always consult with profit. He supplies the raw material on which decisions and policies can be based. The fixed and the fluctuating are thus happily combined in the structure of the administrative system.

The India Office

The official establishment of the Secretary of State is known as the India Office. It consists of persons serving in different grades and occupying different situations. There are clerks, typists, superintendents, accountants, statisticians, etc. Sir Malcolm Seton has stated that their total number was about 320 in his days. Promotion to higher posts comes by seniority and merit. The most successful of these civil servants can aspire to rise to the position of the Deputy Permanent, and finally of the Permanent, Under-Secretary of State. It is this secretariat service which keeps the administrative machinery constantly and efficiently moving. It maintains the continuity of the routine.

§5. SALARY AND EXPENSES

The salaries and the office expenses of the Ministers of a state would be naturally a charge on its people. Those who receive services are expected to pay for them. Such a

proposition would appear to be too innocuous and self-evident to need any elucidation. Yet, the simple justice and undoubted fairness of this dictum were not accepted and honoured by the British Parliament till as late as the Montagu-Chelmsford Reforms.

Not paid by Parliament

At least after 1858, if not before, the salary and expenses of the special Cabinet Minister who was entrusted with the supervision of the Indian administration should have automatically devolved upon the British public. However, Parliament could not resist the temptation to continue an old and invidious but financially advantageous distinction. Alone of all the Ministers of the Crown, the Secretary of State for India was not paid from the British exchequer. His salary was not directly voted by the House of Commons but was saddled on the revenues of India. It therefore came out of the pockets of the poor taxpayer of this country.

But charged to India

This was an application of the principles of business accountancy with a vengeance. The expenditure of keeping the Indian estate was debited to the estate itself. It was argued that the British should not be financially penalized for creating an agency to supervise the administration of a conquered country. Such a convenient profit and loss calculation was of course grossly one-sided and offensive. It smacked of the old-world colonial doctrine which has long been discarded as being short-sighted and vulgar. It must be noted that the salaries of the Secretaries of State for the Dominions and the Colonies were not thrown upon the Dominions or the Colonies but have been paid by England. Indians bitterly complained against the galling discrimination of which they were the helpless victims.

Galling discrimination

Mr Montagu proposed the necessary improvement in this unjust and unseemly position. Since the Act of 1919, the salary of the Secretary of State for India has been accepted as an obligation of the British public and has been provided by it. This does not mean that all the expenses of his establishment and office are also being incurred by the British people. They are a charge upon the revenues of India, but the British Treasury makes an annual grant-in-aid towards them to the extent of £150,000.

Mr Montagu's action

The Act of 1935 has proposed an interesting but insipid change in this arrangement. Section 280 begins by prescribing that the salary of the Secretary of State and also

the expenses of his department, including the salaries and the remuneration of the staff thereof, shall be paid out of monies provided by Parliament. Unfortunately, the hopes created by such a welcome beginning are killed by what follows. The subsequent clause of the same section goes on to add that there shall be charged on, and paid out of, the revenues of the Indian Federation, such periodical and other sums, as may represent the Secretary of State's expenses for performing duties on behalf of the Federation.

Change made by the Act of 1935

The change thus introduced is purely theoretical and verbal. Today, India bears the expenses of the India Office, and Parliament is pleased to make a contribution towards a part of it. Hereafter Parliament will bear that burden and will be pleased to demand a contribution from India. What matters to India is the net amount that she will have to pay. In all probability, there will be no substantial reduction in the burden. Therefore, the only achievement of the Act of 1935 is to bring about an alteration in appearances. It effects a constitutional somersault which is as amusing as it is ingenious. Without probably affecting the existing monetary commitments, it transforms the present recipient of the grant-in-aid into a donor who is privileged to make it!

Deceptive appearances

§6. POWERS AND FUNCTIONS

To the Secretary of State is entrusted the duty of managing those departments of the Government of India which have to function in England. The Montagu-Chelmsford Report has described his powers as they existed when the Report was written. They were extremely comprehensive in range and included every important item. Legislation, taxation, debts, public works, the Services, were all within his jurisdiction and subject to his scrutiny.

Described in the Montford Report

The Act of 1919 also distinctly stated that the Secretary of State may superintend, direct and control all acts, operations and concerns, which relate to the government or the revenues of India. All grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India, required his sanction. This power was to be exercised subject to the other provisions of the Act and rules made thereunder.

Defined by the Act of 1919

Changes made by the Act of 1935

The Act of 1935 has introduced a new constitutional structure. The British Indian provinces have been shaped into autonomous units. At a later stage, these units and the Indian states will be joined into an All-India Federation under the British Crown. The principle of political responsibility will be introduced in the Federal Government to a certain extent. Theoretically speaking, all this change is of vital importance. It demands and implies not only relaxation of control by the Secretary of State but a fundamental alteration in the status of the Governments in India. They now derive their power directly from the Crown of England. It is no longer correct to describe them as mere agents of the Secretary of State, even though he still continues to be their official superior.

An omission in the Act

Sections 278-84 of the Act deal with the Secretary of State, his advisers and his department. They contain fairly elaborate provisions concerning several points. In none of them, however, is his former power of superintendence, direction and control specifically embodied. The omission may be in accord with the elementary principles of federal polity. It may have some value in pure theory. But the practical utility of this constitutional negation will be inevitably very small. Even such a smart academic nicety will not derogate appreciably from the existing powers of the Secretary of State.

Extent of the Secretary of State's authority

Sections 14 and 54 of the Act clearly lay down that whenever the Governor-General or the Governor is required to act in his discretion or to exercise his individual judgement, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State and the Governor-General respectively.

His influence will be still very great

Even a cursory perusal of the Act will show that the number of occasions on which and the purposes for which, these authorities are required to act in their discretion or to exercise their individual judgement is pretty large. No important subject has been denied the opportunity of sublimation by the purifying touch of those autocratic powers of the executive head! Defence, external relations, the I.C.S., the Indian Police Service, the Federal Railway Authority, the Reserve Bank of India and the all-embracing special responsibilities of the Governor-General and the Governor, are all subject

to the control and supervision of the Secretary of State. In fact, his views and attitude can affect the whole sphere of Indian polity.

§7. RELATIONS WITH ADVISERS

The Secretary of State was given the assistance of a Council by the Act of 1858. Since then it was closely associated with him in the work of Indian governance. The Act of 1935 has abolished the India Council. Its place has now been taken by a new body called the Secretary of State's Advisers.

Unhampered authority of the Secretary of State

The relations of the Secretary of State with his Advisers are clearly defined in the Act. It is entirely in his discretion whether to consult or not to consult them on any matter. He may call a meeting of all of them, or of only some of them, or may take the opinion of any one of them individually. Even when their advice is sought and given, the Secretary of State is at liberty to accept or to reject it. The view of the Advisers is binding on him only in respect of matters which concern the superior Services in India. The authority of the Secretary of State is thus practically unhampered in spite of the existence of the body of Advisers.

§8. RELATIONS WITH THE GOVERNOR-GENERAL

The Secretary of State is distinctly superior

The Secretary of State is the agent of the Crown and Parliament of Britain. As such he is invested with supreme authority over the Indian Government. He is answerable to Parliament for the mistakes and misdeeds that may be noticed in the operation of the department in his charge. It is his duty to adjust the tone and manner of Indian governance so as to harmonize them with the wishes and sentiments of Parliament. He is the link between the British people and the Indian bureaucracy. Naturally, he stands higher than the highest official who rules over India in royal pomp and magnificence. The Governor-General in Council is required by law to pay due obedience to all such orders as he might receive from the Secretary of State.

The legal position

Legally speaking, therefore, the position is clear. In case of a conflict between the Secretary of State and the Governor-General, there is no ambiguity on the question as to who should yield. The Secretary of State's dictation is final. The Governor-General has either to accept his superior's mandate, or in the

alternative, to resign his office. Theoretically, therefore, no deadlock can arise between the two authorities because they are not co-ordinate. Even such an able and aggressive Viceroy like Lord Curzon had to bow to the relentless logic of this constitutional definition. And strangely enough, his resignation was destined to be provoked by the unyielding attitude of that very Ministry which, being composed of his friends and partisans, had taken the unprecedented step of sending him out as Viceroy for a second time, in recognition of his splendid services.

The actual position

However, an enunciation of this legal relationship does not, by itself, give an adequate idea of the whole picture. It misses a very important aspect of the practical truth. It leaves unsaid what actually and emphatically exists even in the absence of law or in spite of it. Circumstances dictate their own conventions and codes which contribute substantially to the shaping of realities. They must be as fully understood as the letter of the law itself.

The Governor-General is the man on the spot

It must be remembered that the Governor-General is specially sent out from England to act as the head of a vast bureaucratic Government. His selection is made from the same higher strata of the intellectual and political life of England from which the Secretary of State is also drawn. He is the man on the spot in India and is in direct charge of its huge administrative machine. It is he who is faced with the difficulties of its working and who has to grapple with them with tact and firmness. The responsibility of maintaining peace and order and the duty of conducting the complex operations of government in the vast Indian empire lie heavily on his shoulders.

The Secretary of State is far away

On the other hand, the Secretary of State is separated by distance from the actual scene of the exercise of his authority. He has no personal touch with either the Indian official or the Indian citizen. As a member of the Cabinet, his attention is likely to be as much preoccupied with the problems of British politics as with those of Indian administration. His constant interference with the work of Indian officers would be, in the graphic analogy of the Indian proverb, like driving sheep on the ground from the altitude of the camel's back. It would be physically impossible for the Secretary of State not to allow a certain degree of independence to the views and the actions of the Viceroy.

Interest of Parliament

The intensity of his control would, of course, vary with the intensity of the interest taken in Indian affairs by members of Parliament. If the House of Commons is very keen about knowing things in India and about influencing their course, the Secretary of State will have to be particularly active and vigilant. If, on the other hand, the British masters choose to remain quite apathetic and uninterested, their servant naturally tends to be a little indifferent and non-interfering.

Personal equation

There is also another factor of what is known as the personal equation between the Secretary of State and the Governor-General. Much depends upon the relative strength of these men. The more energetic and forceful of the two personalities will naturally carry the day. Aggressive secretaries like Lord Morley enunciated and acted upon the doctrine that the Government of India were merely the agents of the Secretary of State. On the other hand, it is easily conceivable that some brilliant and capable Viceroys have successfully domineered over the Secretaries of State. If the two authorities prove to be equals of each other in gifts and influence, a clash may sometimes occur. The Governor-General has then to yield and acknowledge the superiority of the Secretary of State.

Difference only of degree

After all, the difference between two such very high dignitaries can be one only of degree. It is created only for ensuring that the constitutional machine does not come to a standstill as a result of insurmountable difficulties. Otherwise, they are essentially co-workers and companions, standing on the same elevated platform, but with a little variation of the levels. The status of superior and subordinate has not that significance in their mutual relations which it invariably and rightly has in the lower official world.

CHAPTER V

THE INDIA COUNCIL AND THE SECRETARY OF STATE'S ADVISERS

A. The Council of India

§1. Reasons for its creation · §2. Indian criticism of the Council

§1. Reasons for its creation

By the abolition of the East India Company in 1858, a long-standing connecting link between England and India was finally removed. It created a perceptible gap in administrative arrangements, particularly because of the disappearance of the Court of Directors. The newly created Secretary of State for India was not selected to hold his office because of his special knowledge of Indian affairs. More often than not, he was totally ignorant about them. He therefore required considerable assistance and guidance in the discharge of his duties. The need was all the greater because of the peculiar political circumstances in which India was placed.

Ignorance of the Secretary of State about Indian affairs

This conquered country, unlike the Dominions, was governed from top to bottom by a foreign bureaucracy. The people of India had not the slightest control over the government of their country. They were permitted to enjoy the civic privilege of being compelled to pay taxes and to obey laws. But they could not presume to sit in judgement upon those potent manifestations of an infallible bureaucratic wisdom! There were no representative legislatures to voice popular feelings, to enact laws, to vote expenditure, and to direct the administrative system.

India had no rights of self-government

It therefore became very necessary to provide some other effective check on the actions of Government officers. Obviously, they could not be allowed to reign in unbridled authority. That would have been detrimental as much to the interests of England as to those of India. Even an irresponsible bureaucracy must be ultimately responsible to some superior control. Otherwise, there is great danger of its deteriorating into a pernicious tyranny. The Secretary of State was therefore

Check was required over the bureaucracy

called upon to superintend the policies and the details of the Indian administration to a very great extent. Every important item of legislation, executive action, and finance was required to be submitted for his previous sanction.

Men with Indian experience appointed to the India Council

The proper performance of such an elaborate duty imposed a heavy responsibility on the Secretary of State. He was a curious combination of power and ignorance. It was prudent to take the precaution that his final decisions were not vitiated by a lack of proper relation to realities. Hence, the Council of India was formed. It was composed of persons who had to their credit long years of service in India, and had retired from responsible positions. A select and first-hand Indian experience was thus gathered together as an active help and enlightenment to the Secretary of State. He was expected to benefit not merely by division of labour but by a valuable accession of knowledge.

Restraint on the Secretary of State

There was another incidental consideration of some importance. Just as it was hazardous to leave the Indian bureaucracy to its own uncontrolled judgement, so also it was a little undesirable to allow the Secretary of State to have unrestrained authority in an extensive administration with which he was not personally familiar. His exercise of that authority had to be prevented from developing into a mild type of political absolutism. He was, of course, responsible to Parliament. But that august body was not likely to get itself involved in his daily routine. The India Council could be perhaps conceived as a limited constitutional restraint on his superior powers, without diminishing in any way his pre-eminence and prestige.

Powers in respect of the Services

The Council was essentially an advisory body, and the Secretary of State was empowered to set aside its opinions if he felt unable to accept them. Only in one important respect, its authority was obligatory and real. The concurrence of a majority of the Council was required for making rules and regulations for the Services regarding their recruitment, conditions of service, pay and allowances, conduct and discipline, etc. This provision conveyed a comforting assurance to the young British entrant in the Indian Services that his rights and privileges were completely safeguarded. They were kept beyond the caprices of British party politics and entrusted to the vigilant and benevolent custody of his senior brethren in the same fraternity.

§2. INDIAN CRITICISM OF THE COUNCIL

Demand for abolition

Indian politicians were always very critical of the India Council and urged that it should be abolished altogether. They felt that it served no useful purpose and was positively injurious to the interests of India.

Its unhealthy composition

From the Indian point of view, the composition of the Council was extremely unhealthy. An assembly of the retired members of the Indian Services may prove to be a store-house of valuable information. Unfortunately, it may also represent a mischievous concentration of reactionary opinions and ideas. A conservative outlook is almost an inseparable feature of the bureaucratic mind. It worsens into diehard obstinacy and gross intolerance if the bureaucracy is not required to live in the salutary fear of the popular will. Indians naturally disliked the association of the Secretary of State with such a retrogade influence. If, by chance, he happened to be a man of some liberal ideas, the weight of the India Council would be cast in just the opposite direction.

Incompatibility with the ideal of self-government

There was also another vital argument. The grant of political rights to India necessarily implies the withdrawal of British control over this country. A self-governing India and a body like the India Council, with its special powers and veto, could not really go together. It was an incongruous combination. As the status of India comes into closer approximation to the status of the Dominions, interference in Indian affairs by Councils and even by Secretaries of State from outside must cease. The India Council was not condemned merely because it was a worthless and costly superfluity which involved an avoidable waste of money. Its existence was fundamentally repugnant to the very concept of political freedom which it is the keen aspiration of India to achieve at an early date.

B. THE SECRETARY OF STATE'S ADVISERS

§1. REASONS FOR APPOINTMENT §2. CONSTITUTION, QUALIFICATIONS AND FUNCTIONS §3. THE NATURE OF THEIR INFLUENCE

§1. REASONS FOR APPOINTMENT

The Act of 1935 takes an apparently momentous decision in regard to the India Council. Clause 8 of section 278 lays down that the India Council should be dissolved. Effect was

given to that provision on 1 April 1937, and it has been announced that the Secretary of State has appointed Advisers as prescribed by the Act. At present their number is nine, though in course of time it must decrease to the limits mentioned in the Act. The impression may be created that at least in respect of the abolition of the India Council, the wishes of the Indian people have been fully complied with. It is necessary to emphasize that such a notion would be quite erroneous and misleading. The reform that is introduced is not so sweeping and so complete as an unwary observer may be led to imagine.

Dissolution of the India Council

The Act does not contemplate the transfer of all control over India from the British to Indians. The old constitutional logic therefore continues to persist unabated. As long as parliamentary authority is maintained over the Indian Government to any extent, the Secretary of State cannot be relieved of all his administrative responsibilities. It naturally follows that he cannot be deprived altogether of the advice of experts who have a personal knowledge of Indian conditions. If the India Council is abolished in deference to Indian wishes, a substitute has been created to perform its functions. The new body consists of persons who are known as Advisers to the Secretary of State.

No complete transfer of power to India

§2. CONSTITUTION, QUALIFICATIONS AND FUNCTIONS

Constitution and status

Appointment: The Advisers will be appointed by the Secretary of State.

Number: Their number is to be not less than three nor more than six as the Secretary of State may from time to time determine. A person who before the inauguration of provincial autonomy was a member of the India Council—that is before 1 April 1937—may be appointed as an Adviser to hold office for such period less than five years as the Secretary of State may think fit. This explains how the existing number of Advisers who have been recently appointed exceeds the statutory maximum of six.

Qualifications: At least one half of the number of Advisers must be persons who have held office for at least ten years under the Crown in India. They must not have last ceased to perform official duties in India under the Crown more than *two* years before the date of their appointment as Advisers. In practice, they will be persons who have occupied

exalted stations in the Indian hierarchy and have retired after a long period of service in varied capacities. It is also ensured that their experience should be quite recent and fresh so that the standards of judgement that they adopt do not become out of date. The Advisers are not capable of sitting or voting in either House of Parliament.

Tenure : The term of office of an Adviser is to be five years, and he will not be eligible for reappointment. He will be at liberty to resign his office at any time, and the Secretary of State may remove him on grounds of physical or mental infirmity.

Salary : Each Adviser gets a salary of £1,350 a year. If any of them is domiciled in India at the time of appointment, he will get an additional subsistence allowance of £600 a year. It is a welcome financial relief to Indian members. They are required to keep two homes, one in India and the other in England. Their expenses are naturally heavier than those of Englishmen living in England. Money for this expenditure is to be provided by Parliament. It will no longer be a burden upon Indian revenues.

Functions : It will be the duty of the Advisers to advise the Secretary of State on any matter relating to India on which he may desire their advice. The powers conferred on him with regard to the Services (Part X of the Act) are not exercisable by him except with the concurrence of his Advisers. Members of the Services in India are therefore assured of adequate protection for their special rights and privileges.

Status : It will be in the discretion of the Secretary of State whether or not he consults with his Advisers on any matter, and if so, whether he consults with them collectively or with one or more of them individually. He also decides whether to act or not to act in accordance with any advice given to him by the Advisers. The superiority and independence of the Secretary of State are thus emphatically brought out. Even the corporate character of the Advisers is dispensed with.

§3. THE NATURE OF THEIR INFLUENCE

Insignificant powers

It will be easily seen that there is no fundamental difference between the Advisers and the India Council which they have supplanted. The whole basis and purpose of the two bodies is the same. The only real power which the Advisers, like their predecessors, can be said to possess is in regard to rules and regula-

tions about the Services. Otherwise, under the dominating personality and status of their parliamentary chief, their very existence may come to be completely eclipsed. They are liable to be entirely ignored by the Secretary of State even when momentous decisions are required to be taken by him.

They deserve to be abolished

Thus, though the India Council as such has disappeared, a very substantial shadow, bearing a close resemblance to the original, will persist as its successor. All the criticism that has been directed against the India Council also applies to the substitute. The latter's veto in the matter of the Services is paradoxical and vexatious when political power is supposed to have been transferred to responsible Indian Ministers. In fact, the body of Advisers, like the India Council, cannot help developing into a respectable rendezvous for the forces of reaction and antagonism towards India's political advance. Their influence will be undesirable and mischievous. The sooner such anachronism vanishes from the Indian constitutional picture, the better it will be for India.

CHAPTER VI

THE HIGH COMMISSIONER FOR INDIA

A. INTRODUCTORY

§1. THE STATE AND ITS FUNCTIONS §2. ITS MATERIAL REQUIREMENTS §3. ITS PURCHASES AND NATIONAL INDUSTRY §4. THE GUIDING PRINCIPLE IN FOREIGN PURCHASES

§1. THE STATE AND ITS FUNCTIONS

A striking feature

THE post of the High Commissioner for India was created for the first time by the Act of 1919. There is one striking peculiarity of this important office. In the considerations which have led to its creation, politics and economics are closely woven together. The High Commissioner's duties are partly political and partly commercial. It is necessary to understand the full significance of such an interesting combination. A very brief reference must be made for that purpose to the nature and functions of the state and to the purpose of its existence. In that theoretical background alone can be properly appreciated all the vital implications of this provision.

Man is a social animal

There is an old saying that man is a social animal. It is his natural instinct to live in association with others. Groups and communities therefore come to be automatically formed. The individuals of whom they are composed have to accept several restrictions on their absolute freedom. All human activity, in the last analysis, is an effort to satisfy wants. They may be physical, intellectual, emotional or spiritual. It is found by experience that the satisfaction of those wants becomes comparatively easy when man lives in society.

The nature of the state

A more developed and organized form of such a society is known as a nation or state. It does not consist of a miscellaneous mass of men; women and children, collected together at random. It is not merely an arithmetical sum total of a certain number of human beings. On the contrary, the citizens of a state are bound to each other by ties of common traditions, common interests and common objectives. The state embodies a distinct collective personality. It transcends all its consti-

tuents and serves as a valuable fountain of life to them. In fact, it is an essential foundation of human civilization. A wise citizen is therefore as keen and earnest in preserving the larger social whole of which he is a part, as he is in preserving himself.

The functions of the state

The functions of the state are twofold. Negatively, it must prevent and repel foreign invasions and suppress internal rebellions. All attempts to harm or to destroy either the individual or the community must be sternly punished. Positively, the state can be turned into a mighty engine of popular advancement. It can create public utilities of various kinds. Industrial, commercial, educational and cultural projects can be undertaken by state initiative and successfully worked by the state agency.

§2. ITS MATERIAL REQUIREMENTS

The nature of a state's activity

For the proper performance of these negative and positive functions, the state naturally requires a huge amount of material goods of diverse types. The army, the navy and the air force have to be equipped on an extensive scale. They have to be supplied with an abundance of food and clothing, arms and ammunition, mechanical contrivances of numerous kinds, warships, submarines, airships and hundreds of other articles.

The state also constructs roads and railways, big irrigation works, telegraph and telephone systems and wireless broadcasting stations. Sometimes, it may undertake stupendous engineering enterprises like the reclamation of land or the harnessing of the energy of a waterfall. It may establish banks and instal industrial plant for the purposes of production. It has also to organize schools, colleges, universities, and other nation-building departments like those of agriculture, public health, etc.

The kind of articles it requires

All this wide activity involves utilization of an immense mass of commodities of different descriptions. Paper, pencils, ink and every other kind of stationery materials, typewriters, bicycles, motor cars, oil engines, steam rollers, tractors, electrical goods, chemicals, medicines, printing machinery and a great variety of other articles are required for the daily use of the servants of the state. The nation in its collective aspect is thus one of the biggest customers for the industrial and commercial products which the modern world can produce.

§3. ITS PURCHASES AND NATIONAL INDUSTRY

Encouraging national industries

The question naturally arises as to how these imperative needs of the state should be satisfied. When an answer is attempted to such a question, a consideration of great importance immediately presents itself. It is a truism to say that the material prosperity of a country depends upon the growth of its commerce and industry. This growth has to be specially encouraged when a country has lagged behind in the economic race. Now, industries can come into existence and can flourish if their products are quickly taken up and consumed. If the output of an industrial plant is continually disposed of, progressive betterment of quality and cheapening of prices are simultaneously effected.

The use of the state's patronage

The state as a great buyer can give a powerful impetus either to the starting of new industries in its territory or to the development of the older ones that already exist. Its demands can create centres of supply within the country. Such a process may perhaps appear to be a little expensive in the beginning. But it is bound to be beneficial in advancing and safeguarding the permanent interests of the community. Big industrial concerns, established on sound foundations, would be constant producers of material wealth. They would make a solid contribution to a nation's progress and happiness and also substantially help in its defence.

Therefore, the collective personality of the nation should contrive to satisfy the enormous mass of its varied wants in a cleverly organized manner. The process of their satisfaction should be inseparably linked with the creation of the very springs of national prosperity within the territory of the nation. Protective tariffs and bounties are, of course, introduced to achieve the same end. But apart from them, the state can easily try to build up the sinews of its economic life in the normal fulfilment of its obligations.

Ideal of self-sufficiency

It must be further emphasized that in a nationalistic world every nation must inevitably aim at the ideal of self-sufficiency. It must cultivate the means of its own defence and protection. When every state is a potential enemy of every other state, dependence upon others for the supply of any basic commodity is highly perilous. For the very safety of a state, it is quite essential that its necessities should be supplied

from its own resources and by its own people in as great a measure as possible.

§4. THE GUIDING PRINCIPLE IN FOREIGN PURCHASES

Purchases from abroad

However, it may happen that certain goods may not be available in one's country. Their manufacture may be also impossible on account of insuperable difficulties created by the national environment. Such articles have then to be necessarily purchased from outside. The principle of such an unavoidable purchase is as obvious as it is simple. The maximum amount of satisfaction has to be obtained at the minimum cost. Goods have to be bought in that market which sells the required quality at the cheapest rates.

Competitive prices

The choice of the purchasers in such instances is not confined to the produce of a particular country. It is determined by the most favourable advantage that may be offered to him in the matter of price and delivery by different dealers. There will be keen competition among manufacturers of the whole world for securing his orders. Without sacrifice of quality, he will get an opportunity to receive tenders of quotations which will be the lowest practicable. Excessive and unnecessary expenditure will thus be avoided.

B. The Position in India

§1. LARGE REQUIREMENTS OF THE INDIAN GOVERNMENT §2. THE METHOD OF PURCHASE AND ITS DEFECTS §3. APPOINTMENT OF THE HIGH COMMISSIONER FOR INDIA §4. PRACTICAL RESULTS §5. CHANGE MADE BY THE ACT OF 1935

§1. LARGE REQUIREMENTS OF THE INDIAN GOVERNMENT

Outlook of the Indian Government

The Indian Government, like all other Governments, are in urgent need of large quantities of a variety of articles. In fact, their demands are quite heavy because the Indian sub-continent is so huge in size and is inhabited by a large population. It is very necessary to formulate and to adopt a definite and far-seeing policy in the matter of these purchases. Unfortunately, the outlook of the Indian Government has not been genuinely nationalistic. They have not felt the thrill of the natural ambition to accelerate India's material prosperity by a sedulous exploitation of every suitable opportunity.

Expenditure of crores of rupees

Crores of rupees are annually spent by the Indian Government in obtaining goods for the satisfaction of their wants. But their plenary authority has not been employed in devising rational means for the co-ordination of that expenditure with the rise and spread of industry in India. It is the Indian taxpayer's money that is utilized by the Indian Government. In the very acts of purchase and sale of which they are the potent instruments, that money can be made to give vital sustenance to the Indian manufacturer and producer, whether actual or potential.

Need for an enlightened policy

India is a land endowed with an abundance of natural resources. It also possesses plenty of manpower. These two valuable assets require to be intelligently organized to form a productive combination. The results of such a uniting process would be marvellous. The economic and moral fabric of the community will be immensely strengthened if the community's services are deliberately requisitioned for the satisfaction of the community's wants. No force could be more powerful and more elevating for the mobilization of a country's creative gifts and their robust consolidation than the collective will of its people. If the Indian Government were popular and patriotic, they would instinctively pursue such an ideal with vigour and enthusiasm.

Government's indifference

However, the British bureaucracy which rules over India, and its British masters who control the Indian Government from their own island home, have been of a different mind. They have not showed any eagerness to think on the subject of India's store purchase in terms of the material advancement of India. Orders for goods worth crores of rupees are being placed year after year outside the country. Bills for their value, bloated as they are by the grandiose profits of foreign manufacturers and of a number of foreign middlemen, are being continuously paid by the poor Indian. No deliberate attempt has been made to turn this vast expenditure into an effective instrument for the industrial rehabilitation of the country. Nothing is more tragic in the history of modern India than this lapse on the part of its rulers.

§2. THE METHOD OF PURCHASE AND ITS DEFECTS

Foreign articles required for the Indian Government are generally manufactured in Europe and America. It was therefore considered convenient to arrange to buy them in the

biggest commercial centre of the world, namely London. The Government naturally required an agent and representative to act on their behalf and in accordance with their instructions in that busy metropolis. To him could be sent a list of their requirements time after time, and he could be expected to procure all the necessary articles on the most favourable terms. It would appear to be only in the fitness of things that this agent should be entirely a servant of the Indian Government, subject to their commands and an instrument of their will.

Purchases made in London

But the actual practice developed quite differently. The Secretary of State and his office are located in London. He is in control of the Indian Government and is in close and constant touch with their important activities and problems. It inevitably happened that he took over the work of purveying to the needs of his Indian subordinates. Whenever the latter desired to purchase particular goods, they were asked to communicate with the Secretary of State. He undertook to perform all the agency functions on their behalf, and to make available to them the different kinds of goods for which they had indented.

The Secretary of State as an agent

The institution of such a system was very unfortunate from the Indian point of view. The Secretary of State is the political superior of the Government of India. His actions and orders cannot be questioned by the latter who have to carry them out loyally and ungrudgingly. The commercial agent of the Indian authorities thus turned out actually to be a master who dictated and commanded and not a servant who quietly obeyed. He was not responsible to those whose money he had the opportunity to spend. On the contrary, he controlled their judgement and discretion and could direct their expenditure in particular channels. It was a queer instance of the topsy-turvy in political and administrative relationships.

An undesirable combination

It must be further remembered that the British conquerors of India, unlike their predecessors, are also great captains of industry. They were the pioneers of the Industrial Revolution, and they have brought a phenomenal increase in their industrial and commercial production. Now, the prosperity and the very existence of an industry depend upon the unrestricted sale of output. If the mass of goods and

Britain's industrial growth

commodities that it contributes is not quickly disposed of, the whole mechanism would come to a standstill and decay. It is therefore of vital importance to all producing nations that they should endeavour to capture extensive markets for the absorption of their products.

The growth of the empire

Britain was blessed by an exceptionally fortunate coincidence in this respect. The development of its industry was accompanied and followed by the growth of its vast empire. Exactly when its capacity to produce a huge quantity of manufactured articles had reached a respectable limit, it acquired immense areas which could serve as lucrative fields for commercial expansion.

Acquisition of India

England's mastery over a richly endowed and thickly populated country like India was established at this very juncture. It was simply inconceivable to the Englishman of those days that the people of this conquered land could be allowed to govern themselves. He therefore kept control over its administration in his own hands. The Dominions, of course, were in a different category. They were largely composed of British communities and were deemed to be perfectly entitled to enjoy the privileges and liberties which are traditionally associated with the British race.

Influence of the industrial magnates

The Secretary of State is completely subordinate to the will of the British Parliament. The industrial and commercial magnates of his country are strongly represented in that sovereign body. They naturally influence his decisions and policy to a very great extent. Nor can their attitude be purely disinterested and impartial. As mighty producers, they would be vigorously pursuing every expedient to increase the export of their goods.

Preference to British goods

In view of this particular psychology of big business and its assiduous search for stable and extensive markets, Britain's political domination over India would appear in an altogether novel and attractive light. It could be revealed to possess the enormous potentialities of a magnificent weapon of economic prosperity. The mechanism of Indian governance could be so manipulated that the utmost possible financial benefit might be derived from it by the British manufacturer and trader.

The fear was widely entertained that India's interests as a buyer were not quite safe in the hands of the Secretary

of State. It was strongly suspected that he was successfully pressed to give preference to British goods at higher cost even when exactly the same quality was available outside Britain at lower cost. His own inclinations also lay in the same direction.

Financial loss to India

This meant the infliction of an unnecessary monetary loss on India. It imposed a thoroughly unjustified drain of its wealth merely for the sake of gratifying and profiting the conqueror. The position was exasperating to the Indian mind because it added the pangs of insult to a grave injury.

It was not very likely that the authorities in India, who were all British, would heartily dislike an injustice of such a flagrant type. But even if they did, they were powerless to prevent it. They could not question the discretion of the Secretary of State. The combination of the constitutional superior and the commercial agent was extremely formidable.

§3. APPOINTMENT OF THE HIGH COMMISSIONER FOR INDIA

The Montford Reforms

The definition of India's political goal in August 1917 and the introduction of the Montford Reforms two years later created a new situation. Those events were illustrative of a distinct change in the angle of vision of the British people. The Crewe Committee recommended a bold departure from the grossly unfair system which gave rise to suspicions and fears in the Indian mind about the intentions and actions of the Secretary of State. The self-governing Dominions of the British Empire appoint their own officers in London for the transaction of commercial and also political business. They are known as High Commissioners. India was denied the privilege of appointing such an officer. The performance of its agency functions was usurped by the Secretary of State.

Appointment of the High Commissioner

The omission was corrected by the Act of 1919. Matters were set right, at least theoretically, by India being allowed to appoint its own High Commissioner. He and his office are stationed in London. His selection is made by the Governor-General in Council, and his salary is paid out of Indian revenues. He is believed to be entirely a servant of the Government of India, amenable to their discipline and subject to their supervision and instructions. The tenure of his office is usually five years. The office has been generally held till now by very senior and highly placed members

of the Indian Civil Service such as Executive Councillors of the Governor-General.

Duties of the office

The High Commissioner has to perform all those agency functions for the Government of India which were formerly performed by the Secretary of State. It is his principal duty to procure for them and for the Provincial Governments all those articles which they are required to import from abroad. He is expected to invite tenders for the supply of goods from all the important producing countries and to secure the lowest competitive prices for them. Irrespective of political or any other kind of pressure that may be exerted on him from outside, his insistence must be exclusively on India's gain. The High Commissioner is also entrusted with certain minor duties like looking after the welfare of Indian students, who are prosecuting their studies in England.

§4. PRACTICAL RESULTS

Some pertinent questions

How far has the primary and patriotic purpose of the creation of the new office been actually fulfilled? To what extent has even a high-salaried High Commissioner been really able to safeguard India's national interests? Are all his purchases invariably confined, and allowed to be confined, to the cheapest markets? Or is he required to observe some kind of preferential discrimination in favour of British and Empire products? These are inevitable questions. If they could be answered satisfactorily, the appointment of the High Commissioner could be justified and welcomed on practical as well as theoretical grounds.

No definite information

Unfortunately, all the statistical and other data on which alone a definite answer can be based, are not accessible to the public. They are concealed in the darkness of official pigeon-holes and confidential files. Comparison between the rates of prices as quoted in different tenders becomes simply impossible in the absence of information. It is therefore difficult to assert that the High Commissioner must be always accepting the lowest tender. Such an assertion would remain unproved and would be considered to be dogmatic. The passing glimpses and sidelights as thrown by occasional references and criticisms in the press are certainly not of a reassuring kind.

There is another factor of fundamental importance. The Government of India are composed almost entirely of an alien bureaucracy. They do not symbolize the Indian people.

In such an undemocratic system, the two are not really equated. In fact, they are likely to be in conflict with each other on major issues. The outlook of foreign rulers cannot always be identical with the hopes and ambitions of those over whom they rule. Their interests may often prove to be mutually incompatible. The British bureaucracy would be naturally eager to support British industry and British trade. A High Commissioner who is entirely its servant would hardly find it feasible to disregard its inclinations and to thwart its cherished desires. The exercise of a purely bureaucratic authority cannot possess the full connotation of popular control.

Indian Government is a bureaucracy

Matters stand differently with the Dominions. Their Governments mean their people. There is no artificial and profound gulf which separates the two. Their High Commissioners staying in London have come to acquire a unique prestige. They are not only entrusted with commercial functions but are also invested with the more dignified ambassadorial garb. They are stationed as the representatives of their people in the imperial capital. Consultations on imperial issues are held through them. They serve as the channel of communication between the daughter nations and the mother country. Usually, they are first-rate politicians who have been leaders of public opinion in their country and have occupied high ministerial office.

Dominions are self-governing

§5. CHANGE MADE BY THE ACT OF 1935

The Act of 1935 contains an important clause concerning the High Commissioner for India. Section 302 provides that he shall be appointed, and his salary and conditions of service shall be prescribed, by the Governor-General exercising his individual judgement. He has to perform such functions as the Governor-General may from time to time direct. The authority of the Government of India, as represented by the Governor-General in Council, and as exercised at present, is thus substituted by the authority of their individual head.

An insidious change

The change is apparently insignificant; but it is decisive. It may prove to be very far-reaching in practice. It is typical of the clever process of neutralizing the grant of power by the imposition of extra restrictions and reductions which permeates the whole scheme of the Act of 1935. The declared object of that

Its reactionary nature

measure is to transfer political power to the hands of Indians. That is why the principle of responsible government is to be introduced even at the centre. And yet, exactly when the bureaucratic Executive Councillors will be transformed into responsible Indian Ministers, there will be a clipping of the Ministers' wings. The Indian High Commissioner will not be nominated to hold office by them nor will he be subordinate to their mandates.

Its practical results

In fact, India's agent in London may not be absolutely beyond the direction and control of the Secretary of State. The Governor-General, when exercising his individual judgement, is required to act under the superintendence of that supreme Parliamentary head. The very object and purpose of creating the office of Indian High Commissioner may therefore stand in danger of being completely frustrated. He would be far removed, and even actually sheltered, from popular control, as exercised by and through an elected legislature. He will not be amenable to public opinion and cannot be expected to fulfill the desires and ambitions of the Indian people. Nor can he acquire that inter-imperial status and importance which the High Commissioners of the self-governing Dominions have been naturally able to achieve.

CHAPTER VIII

PARLIAMENT AND INDIA

§1. THE LEGAL POSITION §2. RELAXATION OF PARLIAMENTARY CONTROL §3. THE ESTABLISHMENT OF CONVENTIONS §4. THE FISCAL AUTONOMY CONVENTION §5. DEFECTS OF THE METHOD OF CONVENTIONS §6. THE POSITION AFTER THE ACT OF 1935

§1. THE LEGAL POSITION

Sovereignty of the Crown and Parliament

THE sovereignty of the British Crown and Parliament over the Indian Empire was established by right of conquest. In strict legal theory, there are no restrictions or limitations on that sovereignty. The form of the Indian constitution is determined by Parliament. The daily routine of its operation is controlled by Parliament's representative and servant, the Secretary of State for India. That body can interfere as freely and frequently as it wills in the affairs of India. The political, the economic and even the cultural destiny of this conquered country can be decisively shaped and moulded by parliamentary command. The British democracy expresses itself through the British legislature. Therefore, the authority of the latter is considered to be absolute and complete.

Control over East India Company

Even during the lifetime of the East India Company; this constitutional position was ever present and was constantly asserted. The Company owed its very existence to a royal charter. Its powers were modified and extended, time after time, by further issues of similar royal or parliamentary charters. At a later stage, Parliament began to appoint small committees of inquiry to scrutinize the details of the Company's activities. It also passed a number of Acts to regulate the method of Indian governance. Pitt's India Act of 1784 went one step further. It set up a Board of Control over the East India Company and thus created a regular department in England for supervising the administration of India. The President of this Board soon acquired the status of a Cabinet Minister.

The Company was abolished in 1858. Since then, the Secretary of State has been functioning on behalf of

Parliament. As has been already explained, he is entirely subordinate to the latter's direction and will. It is true that the British democracy is not much interested in the administrative problems of a distant dependency. The profound indifference of the average Englishman to happenings in India is only equalled by his colossal ignorance about the country and its people. Besides, the extent to which even the parliamentary masters should actually dictate to their own subordinates would have to be determined by considerations of practical policy. All the same, the fundamental constitutional relationship is beyond any doubt or dispute. The British Parliament, which represents the British nation, can pass any legislation for India and can effectively control the whole machinery of its administration.

Control over Secretary of State

§2. RELAXATION OF PARLIAMENTARY CONTROL

However, there is another factor of great importance which materially affects such a purely legal concept. A definition which attributes unrestrained and absolute sovereignty to Parliament in all circumstances has no correspondence to reality. In respect of the Dominions, for instance, it would be entirely inapplicable and out of date, particularly after the enactment of the Statute of Westminster. The British Empire is described as a free association of equal partners and as a commonwealth of nations. Some of its most important constituents are fully self-governing and independent. In fact, no momentous decision affecting the Empire can be taken by the British Parliament without the consent of the Dominions. It is therefore absurd to imagine that Parliament can presume to look upon itself as an omnipotent sovereign who can claim and exact implicit obedience from all its subjects overseas.

The status of the Dominions

India has not yet been privileged to be in the category of the Dominions. It has not yet been invested with what has been known as Dominion Status. The Indian Government is not exclusively formed by the Indian people nor is it controlled by them. A bureaucracy which is ultimately responsible to the British Crown and Parliament but not to the Indian nation is specially recruited and commissioned to rule over India. It therefore follows that parliamentary authority in respect of Indian governance is not merely formal and nominal. It is real. Even the Act of 1919 brought about no derogation in

India not a Dominion

either the Secretary of State's or Parliament's powers of control over the Government of India. It has been repeatedly emphasized by the British politician that Parliament must be the sole judge of the time and of the degree of each constitutional advance which India may be allowed to make.

Promise of self-government

Yet, the intentions of Parliament about the political future of India were expressed in clear language in 1917. Mr Montagu's famous pronouncement was made with the full concurrence and on behalf of all his Cabinet colleagues. It enunciated the ideal of responsible government for India, to be realized in gradual stages. The Act of 1919 was conceived as a perceptible step towards that distant ideal. The Act of 1935 is supposed to be leading in the same direction. It professes to inaugurate full provincial autonomy and also to incorporate the dyarchical principle in the structure of the All-India Federation whenever it is brought into existence.

Diminution of Parliament's powers

Now, the grant of political rights and privileges to India would necessarily imply the withdrawal of parliamentary control over its affairs at least to the extent of that grant. If the transfer of power to Indians is to be honest and genuine, Parliament cannot simultaneously retain that very power in its own possession as before. In the sphere in which India is allowed to enjoy the privilege of ruling over itself, the rule of an outside non-Indian authority like the British Parliament must obviously and inevitably cease. When the Central and Provincial Governments in India become completely subordinate to representative Indian legislatures, the superintendence of a British Minister over those Governments will have to vanish altogether. The logic of such a situation is simple and unimpeachable. If India is permitted to govern itself, it cannot, at the same time, be governed by foreigners. Either Indians or the British but not both together can play the role of final masters over the Indian sub-continent.

Recommendations in the Montford Report

The Montagu-Chelmsford Report contained a definite recommendation pertaining to this question. It suggested that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament should be prepared to forgo the exercise of its own powers. That supreme body must set certain limits to its own authority if India's political advance is not to be a ridiculous shadow. It would be for Parliament a process of self-effacement from the Indian scene. But it must be deliberately pursued *pari passu* with

the development of responsible institutions in India. A progressive increase in India's political freedom would have to be automatically accompanied by a corresponding decline in the forces that have kept it in dreary subjection. In short, there must be a complete devolution of power to an Indian democracy.

The method of conventions

However, no specific provision for curtailing the authority of Parliament or of the Secretary of State was included in the Act of 1919. Such a legal restraint was felt to be quite inconsistent with British constitutional traditions and therefore repugnant to the British mind. But what was not effected by the letter of the law was sought to be achieved by the establishment of conventions. It is necessary to understand the peculiarities of this unique constitutional weapon and the manner of its operation.

§3. THE ESTABLISHMENT OF CONVENTIONS

What is a convention?

A convention is a dignified name for a custom, practice or tradition which commands general acceptance. The term has acquired almost a technical significance in the language of political science. A convention is not a law. It is not enacted by a legislature. Its violation is not accompanied by a judicial penalty. Yet, it can have the same force and prestige which characterize law. A nation, like an individual, may drift into a certain course of action and may get thoroughly accustomed to its routine. It will make every effort to maintain what has actually become a part of its normal life. Similarly, a people may voluntarily agree to abide by a certain code of conduct and loyally carry out the agreement. It would be entirely a self-imposed obligation, not enforceable in law. But because of its invariable adoption, it becomes a vital element in social and political life.

The example of the British Cabinet

Some of the most important political institutions of England are not known to the English statute book. They are evolved by and embodied in very strong conventions and traditions which are too firmly rooted in the country's life to be disturbed or dislocated lightly. The Cabinet system and responsible government of the parliamentary type are the very essence of British constitutional development during the last two centuries. They are the most outstanding contribution made by the British genius to political theory and practice. Yet, neither the Cabinet nor the doctrine of

responsibility were formulated by legislative enactment. They form a glorious chapter of the unwritten law of the land.

As no statutory restrictions were deemed feasible on the Secretary of State's superior powers, it was proposed that he should be asked to accept them of his own accord. Two cases were clearly distinguished in practice and definite action was recommended for both of them.

Transferred subjects

The transferred provincial subjects were avowedly ministerial subjects. Parliament had delegated all control over them to provincial legislatures. These latter bodies were purposely democratized and made more representative in order that they should play their role properly in the scheme of responsible government. The retention of active parliamentary control over these matters was therefore an evident incongruity. Hence, it was prescribed by a rule made under the Act of 1919 that in respect of transferred subjects the power of the Secretary of State to superintend and control should be strictly limited to the minimum. It should be exercised only for the purpose of safeguarding the administration of the central subjects and for deciding matters in dispute between two provinces.

Central and reserved subjects

The central subjects and the reserved provincial subjects were in a different category. Here, the ultimate responsibility, legally speaking, was supposed to lie on Parliament. No relaxation of the Secretary of State's authority was therefore possible by the compilation of rules. But the spirit of the Montagu-Chelmsford Reforms could not be ignored. They were proclaimed to herald a new era of Indian freedom. The Act of 1919 was stated to be the first instalment of the gift of political autonomy. It was admittedly a prelude to further successions of similar instalments, the final stage being the attainment of Dominion Status. In these circumstances, the control of the Secretary of State even in reserved provincial and in central subjects could not remain entirely absolute and undiminished, as it was before.

The convention

It was therefore recommended that in these subjects also there should be some delegation of financial and administrative authority to the Government of India and to the provinces. The adoption of a definite convention was strongly recommended for that purpose. Accordingly, the following undertaking was officially given, and it has since been recognized as a necessary feature

of the working of the Indian constitution. If on any matter of purely Indian interest, the executive Governments in India and the Indian legislatures are in agreement, the Secretary of State and Parliament would not ordinarily interfere with the decisions arrived at in India, even if their views were opposed to that decision. Many party leaders of Britain have supported this promise.

§4. THE FISCAL AUTONOMY CONVENTION

Fiscal questions

One particular sphere for the operation of such a convention and for the application of the principle of non-interference was specifically mentioned by the Joint Parliamentary Committee which reported on the Bill of 1919. The belief, they said, was widespread, that India's fiscal policy was dictated from Whitehall and that it was intended to benefit Britain at the cost of India. The Committee felt that the entertainment of such a belief was quite undesirable. It therefore suggested that liberty should be granted to the Government of India to devise the tariff policy which seemed to them to be best fitted to India's need, taking India to be an integral part of the British Empire.

The convention

Here also, the method of relaxing parliamentary authority was to be the institution of a suitable convention and not a limitation imposed by law. It was proposed that whenever the Indian Government and the Indian legislature agreed on fiscal questions, the Secretary of State and Parliament should not ordinarily interfere. It was indeed just a little concession, but it was pompously described as the bestowal of fiscal autonomy on India.

Occasion for a precedent

An important precedent in conformity with this recommendation was established only a couple of years after the introduction of the Montford Reforms. The conclusion of the Great War was inevitably followed by a big trade slump and depression throughout the world. Industry was disorganized, production had to be curtailed, and incomes dwindled. The Government of India were faced with a grave financial situation. Their annual budgets presented a series of large deficits and their credit had gone very low. Heroic efforts had to be made to restore the equilibrium between income and expenditure. Higher taxation and ruthless retrenchment were the only effective remedies for preventing an ugly deterioration in the financial stability of the country.

Increase in Indian import duties

The Government of India were therefore constrained to propose a drastic increase in the rates of customs duty levied by them on all articles imported into the Indian ports. The proposal was sanctioned by the Indian legislature. The British industrialists, however, were greatly annoyed and perturbed by the whole scheme. Nothing has proved more exasperating to them than the prospect of the Indian Government helping Indian trade and industry, directly or indirectly. Long before the outbreak of the War, they had betrayed their fanatical intolerance in this respect. The imposition of the notorious excise duties on cotton goods produced in India is one of the most shameful episodes in the story of British imperialism. And now, four years after the Great War, the Indian Government and the Indian legislature were committing a similar offence against the selfish sensibilities of the British manufacturer! A high tariff was bound to be protective in its effect, at least to a certain extent, even if the intention of its levy was purely to obtain revenue.

Mr Montagu's action

A deputation of Lancashire merchants therefore specially waited upon Mr Montagu, who was then the Secretary of State for India, and requested him to exercise his superior powers of control and veto for killing the Indian scheme. Mr Montagu's reply was unambiguous and emphatic. He did not enter into the merits of the question. To him it was enough that the Government of India and the Indian legislature were agreed on the tariff issue. That was just the reason and the occasion for allowing freedom of action to the Indian authorities. Mr Montagu therefore made it clear to the Lancashire deputation that, in the light of the recommendations of the Joint Parliamentary Committee, he was unable to interfere in the matter of the new customs schedule that was proposed by the Government of India with the full concurrence of their legislature.

This was the very first test of the genuineness of Parliament's promise, and under the guidance of a liberal-minded statesman like Mr Montagu, the right precedent was unequivocally established. Another Secretary of State, Mr Wedgwood Benn, who was a member of the Labour Government during 1929-31, heartily endorsed the same policy. But even such momentous declarations could be little more than gestures of sympathy and goodwill. They were marked by certain inherent limitations which palpably restricted their utility.

§5. DEFECTS OF THE METHOD OF CONVENTIONS

Difficult conditions

It does not require much intellectual effort to realize that the autonomy conferred by the method described in the foregoing pages could not have any appreciable practical value. The gift was bound to remain more or less an academic curiosity, very rarely in evidence as a living force. Only in exceptional circumstances could it come to be invested with some suspicion of reality. The convention which is intended to unlock the gates of India's fiscal freedom would itself be able to operate only when certain essential conditions are amply fulfilled. And those conditions are almost impossible of fulfilment in the normal course of Indian administrative routine. The 'ifs' of the contract are very big and forbidding indeed!

Relations of the Indian Government with their legislature

Thus, at the very outset it is declared indispensable that the Government of India and the Indian legislature must be in agreement with each other if the new freedom is to be experienced by Indians. Now, even the bare statement of such a requirement would expose the inherent improbability of its satisfaction. The Government of India is an irresponsible alien bureaucracy. It is drawn from a great conquering nation and embodies the views, the sentiments and the interests of the British masters of India. The elected Indian legislature, on the other hand, reflects the aspirations and the distress of a subject people. It serves as a dignified vehicle for the expression of the hopes and fears, the ambitions and the restless ferment, of a conquered race.

Fundamental difference

Those who are in the enjoyment of power would be naturally bent on extending and perpetuating it. Those who are desirous of acquiring power would be equally naturally keen on disputing the possession of that power by the present rulers. The aim of all political agitation in India has been the attainment of Swaraj. The relations between the executive Governments in India and the Indian legislatures are not likely to be marked by cordial harmony. Rather, there is likely to be a fundamental difference and antithesis between their objectives. A convention which presupposes agreement between two parties which are more likely to oppose than to agree with each other is an empty illusion. In its very definition it conveys a clear assurance of its utter futility. The precedent established by Mr Montagu was really too exceptional

in the circumstances of its origin to be capable of frequent repetition.

Official and nominated members in the legislature

Other difficulties have also been noticed in the working of the convention. The central legislature is not composed entirely of elected representatives. It contains a fairly large proportion of official members whose votes are directly commanded by the Government. There are also the nominated non-officials whose votes can be appreciably influenced by the official whips. The views of the legislature are evidently intended to be taken as an indication of Indian opinion in general. It therefore follows that these official and nominated non-official members must be directed to abstain from voting whenever decisions are to be taken on highly controversial issues. That was the contention put forward by prominent elected members of the Legislative Assembly in 1930 when the question of giving preferential treatment to British textiles came up before it for discussion. However, the Government has not accepted this interpretation of the procedure for ascertaining the legislature's wishes and have mobilized all their numerical strength on the floor of the house whenever important issues have been disposed of.

Purely Indian interests' not easily defined

Further, what is exactly connoted by the expression 'purely Indian interests'? And that too by taking India to be an integral part of the British Empire? In the highly complex life of modern times, the interdependence of even independent nations is a striking phenomenon. Any step contemplated or adopted by one nation has its inevitable repercussions on the whole world. The economic and political self-assertion of India is bound to affect adversely other parts of the Empire as well as the mother country. In such a state of affairs, 'purely Indian interests' may be discovered to be but an elusive phantom. And as a consequence, the convention which confers fiscal autonomy would be nothing more than a pedantic and lifeless decoration.

An uncertain basis

In fact, the Indian public has not been much enamoured of the method of conventions. It might work effectively in a free country like England, the growth of whose polity has been going on unhampered for centuries. But it is not easy to transplant traditions and all the psychological background which creates them. One cannot help feeling highly sceptical about the efficacy of a convention which can easily deteriorate into a mere personal idiosyncrasy of the Secretary of State or into a

caprice of party forces in a foreign democracy. The foundations of India's fiscal and political autonomy must be certainly more solid and abiding than such a flimsy theory.

§6. THE POSITION AFTER THE ACT OF 1935

After the Federation

What will be the nature of parliamentary control over Indian affairs after the Act of 1935? What will be the position of Parliament *vis-à-vis* the Federation of India when the latter comes to be inaugurated in accordance with the provisions of the Act? Will there still be need for the enunciation of conventions or has autonomy been conferred on India in a more direct form? These are pertinent and interesting questions and require to be examined a little closely.

View of the Joint Parliamentary Committee

The Joint Parliamentary Committee which reported on the Bill in 1934 distinctly gave its opinion that with the passing of the new Act, the existing convention will necessarily lapse and that the federal legislature will enjoy complete fiscal freedom. However, they were also emphatic in stating that this freedom could not be allowed to be utilized for the purpose of injuring and excluding British trade. They therefore recommended that all doubts in the matter should be completely removed by the inclusion of a definite item in the special responsibilities of the Governor-General and by a further amplification of the same in the Instrument of Instructions to him.

Special responsibility of the Governor-General

Accordingly, section 12 of the Act which defines the special responsibilities of the Governor-General contains the following clause: 'The prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment.' A whole chapter of the Act—sections 111-21—is also specially devoted to an elaboration of the same point. The explanatory comment of the Joint Parliamentary Committee on such a provision would bear repetition. It gives a clear idea of the intentions of Parliament.

Clarification of the issue

'It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian legislature to develop their own fiscal and economic policy; they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff

concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject the trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. It should further be made clear that the "discriminatory or penal" treatment covered by this special responsibility includes both direct discrimination . . . and indirect discrimination. . . . In all these respects the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

The concept of reciprocity

'We think that the United Kingdom and India must approach their trade problem in a spirit of reciprocity, which views the trade between the two countries as a whole. . . . The reciprocity . . . consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries . . . but the conception does imply that when either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.'[1]

No absolute autonomy

The exposition contained in this long extract is sufficiently enlightening. It clearly shows that the fiscal autonomy which will be conferred upon the future Federation of India will not be unrestricted and absolute as in the case of the Dominions. It will be linked up with, and severely limited by, the doctrine of reciprocity with Britain. The implications and the obligations imposed by this doctrine have been elaborated in very wide terms. It is intended to apply not only to individual contracts about the import and export of particular commodities but will comprehend the whole range of relationships between England and India. The important aspects and consequences of such a position require to be examined at some length.

[1] Report of the Joint Parliamentary Committee, pp. 205-6.

Reciprocity must be based on free will

It must be emphasized that the concept of reciprocity implies a purely voluntary agreement between two nations. Each must be free to decide what will be most beneficial to itself and in the light of that conviction to enter into specific contracts with the other. The terms of the contract must be willingly accepted by both the parties. There is no room for compulsion or force in such an arrangement. It is entirely the result of friendly negotiations and discussions in pursuit of a common purpose. A country's participation in a scheme embodying this principle would necessarily presuppose the enjoyment by it of complete freedom from outside control. And as long as that freedom is not predicated for India, the language of reciprocity would be only a pretentious euphemism for British dictation.

Control of the Secretary of State

Section 12 of the Government of India Act makes it clear that in matters where a special responsibility of the Governor-General is involved, he has to act in the exercise of his individual judgement. Section 14 further adds that whenever he exercises his individual judgement, he will be under the general control and direction of the Secretary of State. The undesirable results of this closely woven chain of constitutional definition can be easily imagined. Under its inhibitory action, the fiscal autonomy of India may dwindle into merely an erratic display of the personal prejudices of British politicians and of the odd movements of opinion in the British democracy. That was precisely the glaring defect of the old method of conventions.

A difficult distinction

The line of demarcation between what is described as the legitimate ideal of fostering Indian interests and the mischievous desire to harm British trade will be necessarily very ambiguous, imaginary and uncertain. So far as mere results are concerned, the two policies may at times even shade off into each other. Any effective protection devised in furtherance of India's industrial advancement will be intended to be, and will actually be, a distinct handicap to the British.

The task of judging motive

It is the Governor-General who is empowered to judge the Indian motive and to put a correct interpretation on the Indian objective and will. Now it is a matter of ordinary experience that a proper verdict even on easily ascertainable facts is difficult enough. A verdict on the intangible and mysterious complex of inner motive is, of course, much more

difficult and risky. The problems of the psychological domain are extremely nebulous. Any definite judgement on them would inevitably tend to be more subjective than detached.

The Governor-General neither independent nor impartial

It must be remembered that the Governor-General who will be privileged to play the enviable role of the final and supreme judge in fiscal matters cannot help being a pronounced partisan himself. As an Englishman, he would be naturally very solicitous about the welfare and prosperity of this motherland. His attitude and actions are bound to be materially influenced by the opinions of his people. It is therefore impossible for Indians to feel assured about the impartiality and fairness of a tribunal which is neither independent nor disinterested.

PART III

THE CENTRAL GOVERNMENT

CHAPTER VIII

CENTRAL AND PROVINCIAL GOVERNMENTS

A. Distinction between Central and Provincial Governments

The great size of India

India is a vast country. It is not possible to rule over its immense area from a single headquarters, however central its location. A single, unified, official agency cannot adequately meet the requirements of its huge and diverse population. For the purposes of governance, it must be, and is actually, divided into several territorial units.

The Provincial Governments

Every such unit, known as a presidency or a province, has a Government established in and for it. The jurisdiction of these Governments is strictly limited to the provincial sphere, as understood both in the geographical and in the political sense. The range and the bounds of this sphere are definitely marked out.

The Central Government

At the head of all the Provincial Governments stands the largest entity known as the Government of India. Its authority extends to the whole country, and its responsibilities are naturally greater. The subjects that it manages have a vital bearing on all parts and people of the land. Its powers of supervision and control are very comprehensive.

Their separate study

The Government of India represents the unity of India, and the Provincial Governments represent its diversity. For the purposes of exposition, it is convenient to separate the two entities and deal with each in detail. The links that connect them and serve to co-ordinate their different activities, have also to be properly grasped.

Accordingly, this part of the present work will be devoted to a description of the Central Government. The next part will contain a discussion of its relations with the Provincial Governments and then an analysis of the composition and working of the latter.

B. Threefold Division of Governmental Functions

The functions of a Government are classified by writers on

political science into three categories. It has to frame laws, to carry out laws, and to interpret laws and examine their application. A threefold mechanism is usually provided in a modern state for the performance of this threefold duty. There is, thus, the legislature, the executive council or ministry, and the judicature.

Three different aspects

The study of government ultimately resolves itself into a study of these administrative instruments. Their forms and their powers require close attention. Every one of them has to be treated as an independent subject for investigation. Then an attempt will have to be made to elucidate the manner in which they stand related to each other.

The method of study

That is the main scheme of the following chapters, both in regard to the Central Government and also in regard to the Provincial Governments. Each will be studied in its executive and legislative aspects, the judiciary being described at a later stage.

CHAPTER IX.

THE CENTRAL EXECUTIVE

THE Act of 1935 has proposed certain radical changes in the structure of the Government of India. The present unitary system will be transformed into a federation. The Indian states will be associated for the first time with British India in the formation of an all-India polity. The principle of responsibility will be introduced to a certain extent in the working of the central executive. The central legislature also will be considerably re-shaped in consistency with the federal doctrine.

Changes made by the Act of 1935

However, for various reasons, this part of the Act has not been made operative simultaneously with the introduction of provincial autonomy. The legislative skeleton of the Indian Federation has been provided by the Act. But it has yet to be quickened into life. The date of its actual inauguration has still to be announced. The Viceroy's special emissaries are engaged in holding consultations with rulers of states and assisting them in overcoming the doubts and difficulties which they may be experiencing about joining the Federation. These deliberations, it is hoped, will bear fruit in the near future.

They are to be introduced later

As long as the new Act does not come into force in this particular respect, the constitution of the Government of India, as framed by the Act of 1919, will continue to function. It is that constitution which is described at length in the following pages. It depicts the picture of the present. In a subsequent chapter, a glimpse is given of the future as it is likely to be. It contains a short account of the new federal scheme.

The present constitution

The executive side of the Central Government is composed of the Governor-General of India and his Executive Council. They are inseparably linked with each other and must work as a homogeneous body.

Still, the Governor-General is so dominant in the Indian constitutional picture that it becomes necessary to appreciate all lines and colours of his individual portrait which is inset

in that larger picture. He is not merely the part of a whole but, in a diminutive measure, himself constitutes a whole.

For purposes of explanation, therefore, the executive side of the Government of India is split up into two parts. One deals with the head of that Government and the other is devoted to a description of his Council.

A. The Governor-General of India

§1. HISTORICAL §2. APPOINTMENT, QUALIFICATIONS AND TENURE §3. RELATIONS WITH THE EXECUTIVE COUNCIL §4. RELATIONS WITH THE LEGISLATURE §5. STATUS AS VICEROY §6. INFLUENCE

§1. HISTORICAL

Governors of presidencies

As long as the Company's activities were purely commercial, there was no need for the appointment of a big official in India like the Governor-General. The few territorial possessions which the Company had acquired even before the middle of the eighteenth century, were merely the accidents of its trade. They had no political significance whatever. Bombay, Madras and Calcutta were the principal centres of the Company's business. Separate Governors, assisted by Councils, were appointed to carry on the trade of the Company in areas contiguous to these cities. In status and authority, the three officers stood on a level of perfect equality, and none could assume the airs of a superior. They were united in a common subordination to the Court of Directors in distant England.

The need for appointing a Governor-General

When the Company took a fateful plunge in Indian politics, and began to fight wars and build up an empire for itself, the situation was radically changed. The requirements of a military and imperial career were obviously more complex and onerous than those of an ambitious trader. It became necessary to co-ordinate the Company's policy and resources in the different parts of the Indian continent. Its efforts required a unity of command and direction in order that they should not be dissipated in a large number of fruitless and fatal adventures. A sense of oneness had to be inculcated among all the servants of the Company throughout the country, and a healthy coherence had to be given to all their actions.

The Regulating Act of 1774 made provision for the office of Governor-General for the Company's dominion in India.

Warren Hastings was the first holder of that distinguished office. Its importance and responsibilities increased with the increase in the Company's authority. The Acts of 1784 and 1833 reiterated the supreme position of the Governor-General in the Indian polity. Strong-willed personalities like Cornwallis, Wellesley, Lord Hastings and Dalhousie established traditions of power and prestige which lifted up the Governor-General to an almost regal and certainly awe-inspiring eminence. After 1858, he was invested with the additional and unique dignity of the Crown's representative. Since then, he has also been designated as the Viceroy of India.

Parliamentary Acts

§2. APPOINTMENT, QUALIFICATIONS AND TENURE

The Governor-General is appointed by His Majesty, acting on the advice of his Prime Minister. Nomination to this high office cannot evidently be determined only by academic or professional merit. But there are certain well-understood tests which must be fulfilled by the person who is selected. The Governor-General is invariably picked from the British aristocracy and often possesses very good family connexions. He is a man of social status who has played some prominent part in British public life. Usually, he happens to be a person who has made his mark as administrator, statesman or politician, before he is invited to go out to India as Viceroy. Generally he has ample parliamentary experience to his credit. Many holders of the viceregal office are known to have previously risen to the position of Cabinet Ministers. The training and culture of such scions of noble houses are supposed to impart to them a robust freshness of outlook and a broad, sympathetic vision, which are particularly valuable assets to the head of a Government.

Appointment and qualifications

The office of Governor-General is essentially a non-party office. The dignitary who holds it does not change with a change of Ministry in England. Continuity of executive government and freedom from the disturbing effects of purely artificial fluctuations are ensured by this salutary practice. In recent years, Lord Reading served under three different Ministries and Lord Irwin served under two. Acute political differences with a new Secretary of State, who may have come into office after a dissolution of Parliament and fresh elections, may sometimes precipitate the resignation of a Governor-General. But such instances are very rare. Thanks to the high standard

A non-party office

of British political sagacity and public morals, India is not allowed to be turned into a shuttlecock for the sport of the party leaders of Great Britain. The Indian question is always declared to be a question above party. There always seems to be a general consensus of opinion among British politicians of all schools of thought about the policy which the British should adopt towards India.

Tenure and leave

The tenure of the office of Governor-General is not fixed by law, but custom has fixed it at five years. By the Leave of Absence Act of 1924, the Secretary of State in Council may grant to the Governor-General leave of absence from India for urgent reasons of public interest, health or private affairs. The period of such leave is not to exceed four months, and it is not to be granted more than once during his tenure of office. Suitable leave allowances are provided for under the rules made by the Secretary of State.

§3. RELATIONS WITH THE EXECUTIVE COUNCIL

Relations with the Executive Council

The duties and powers of the Governor-General are numerous and varied. He is the head of the Indian administration and the highest official in the land. He, together with his Executive Council, is entrusted with the task of maintaining peace, order and good government in India.

The Governor-General is the president of his Executive Council and has power to nominate a vice-president from among its members to preside in his absence. He has power to make rules and regulations for conducting the meetings of the Executive Council. He distributes work among its members. In case of an equality of votes in the Council on any question, he can give a casting vote.

He exercises general supervision over the work of the Executive Councillors and can make himself closely acquainted with the details of departmental administration, either directly from the members or from their immediate subordinates, the Secretaries. These officers, curiously enough, enjoy a unique and anomalous constitutional position. They have direct access to the Viceroy over the heads of their immediate superiors.

His patronage

In the selection of members of the Executive Council, the opinion and influence of the Governor-General count for a great deal. His recommendations in the matter are generally accepted by the higher authorities. He has also the power of appointing

Governors of provinces other than Bombay, Madras and Bengal. A large amount of important patronage is thus left in his hands. This factor is not particularly favourable to the growth of that spirit of independence in the Executive Council which is found to be a characteristic feature of the British Cabinet.

The British Cabinet is not bureaucratic

There is another significant difference between the two institutions. Members of the Cabinet are not lifelong bureaucratic servants. They are men who follow different professions and may be lawyers, doctors, industrialists, traders, aristocrats and even labourers. They are not expected to be experts in the administrative sphere. They find a place in the Cabinet because they are the leaders of Parliament and, in the last instance, of the nation.

The Executive Council is bureaucratic

On the other hand, the Executive Council of the Governor-General is composed to a large extent of bureaucratic officials. Its membership is the glorious prize which is earned at the end of prolonged service in some Government department. To rise to the heights of an executive councillorship is the life-long ambition of every civilian. To discover administrative talent and reward it by the conferment of that exalted office is the constant objective of those who control the Indian bureaucracy.

Its attitude

Thus, in the very fundamentals of its composition and outlook, the Indian Executive Council differs noticeably from the British Cabinet. The former is naturally more susceptible to superior control. Its members are more subdued in their opposition to the Governor-General if ever they happen to disagree with him. There is an atmosphere of discipline and submission in the usual routine of its working. It is otherwise with the Cabinet. It has more decided traditions of equality and independence.

The Governor-General dominant

The Governor-General of India can, indeed, be technically described as only one among several members of the Executive Council. He has an additional or casting vote in case of a tie. Except on the rare occasions on which he chooses to exercise his emergency powers, he might give the impression, at least to a superficial observer, of being only first among equals. However, the president of the Executive Council is also the Governor-General and Viceroy, and the ramifications of the combination are extremely formidable.

Power of overriding the Council

Warren Hastings was very unfortunate in his relations with the Executive Council. Some of its members adopted an attitude of implacable hostility to him. Their reckless obstruction and mischief demoralized the whole administrative machinery and created unseemly deadlocks. Cornwallis became wiser by the sad experience of his predecessor. Before he accepted the office of Governor-General, he made the important stipulation that the Governor-General should be vested with an extraordinary power to overrule the whole or part of his Council whenever he is convinced of the futility and harmful nature of its opinion. The demand was granted and Parliament passed a special Act in 1786 to that effect.

Its exceptional use

Ordinarily, every measure brought before the Executive Council requires the assent of the majority of its members in order that it should be passed. It may be that the Viceroy finds himself outvoted on occasion. Normally, he submits to the wishes of the majority. But the exceptional power of overriding and setting aside its decisions has been always in the armoury of the Viceroy. It is indeed very rarely used. In fact, since its creation, it has been used only once, in 1879, by Lord Lytton to reduce the cotton duties. But its mere presence in that armoury is enough to chasten any petulance on the part of the Executive Council.

The British practice

In a constitution like that of Britain, an internal conflict in the executive will be shifted to Parliament and finally to the nation. The centre of a serious dispute cannot be confined only to the Cabinet. The issue will be ultimately determined by national vote. Therefore, the executive is not required to be equipped with any extraordinary overriding power.

§4. RELATIONS WITH THE LEGISLATURE

His powers over the legislature

The Governor-General has considerable powers with reference to the legislature. Up to the Reforms of 1919, he was the ex-officio president of the Imperial Legislative Council. After the introduction of the Reforms he ceased to have that privilege. Still, his powers over the legislature are many. He can address both chambers of the legislature; he can summon, prorogue and dissolve them; he can extend the period of their tenure in special circumstances. He appoints a date and place to hold fresh elections; also a date and place for holding sessions of either chamber.

No measure affecting subjects like the public debt or the revenues of India, religious rites and usages of British subjects, discipline of the army, foreign relations, provincial subjects and provincial laws can be introduced in any of the legislative bodies of India without his previous assent. He can stop the proceedings of either of the chambers on any bill, clause or amendment, if he feels that the discussion is likely to affect the safety and tranquillity of the Raj. He can send bills back for reconsideration by the legislature. His assent is required for all bills passed by the legislature before they can have the force of law. This is true of central as well as provincial legislation. He can require certain bills falling within the provincial sphere to be reserved for his consideration or for the consideration of His Majesty in Council.

Certification

In addition to these more or less routine powers which the head of an administration must possess, an exceptional overriding veto against the decisions of the legislature has been bestowed upon the Governor-General of India by the Act of 1919. This weapon was forged on the anvil of the Montford Reforms. It corresponds to a similar veto possessed by him against the Executive Council. 'Where either chamber refuses leave to introduce or fails to pass in a form recommended by the Governor-General, any bill, the Governor-General may certify that the passage of the bill is essential for the safety, tranquillity or interests of British India', and thereupon, even if the legislature refuses to pass such a bill, it can become an Act by the mere signature of the Governor-General.

Reasons for its creation

A grave constitutional anomaly was thus created. A single head of the administration was deliberately empowered to defy the opinion of an elected legislature. The inclusion of such an extraordinary provision in a 'Reforms' scheme only testified to the imperfect and transitional character of the Reforms. Mr Montagu and Parliament did not intend that the Government of India should be made fully and wholly responsible to the Indian people. But they were equally emphatic in holding that it could not continue to be as thoroughly irresponsible and bureaucratic as it was before the War.

Transitional nature of the Reforms

They therefore evolved a peculiar plan. It attempted to combine two systems which are inherently incompatible. The legislatures were materially increased in size and were made more democratic and representative. Larger powers were conferred upon them. They were to be the agency for the

enactment of all laws. A part of the budget was made subject to their vote and they were thus called upon to supply a small portion of the resources of the state. Yet, the executive was to be in no sense subordinate to the legislature. It was to continue to be responsible only to the extra-territorial sovereignty of an absentee Parliament which functions in a distant country.

Avoiding deadlocks

The severe logic of such an incongruous blend of conflicting constitutional principles would be self-evident. A serious difference of opinion between the two vital parts of the Government may lead to complete deadlock and bring the whole machinery to a standstill. An effective authority has to be provided for ending such an impasse. But, as the executive is ultimately responsible to Parliament and not to the Indian legislature, it must be enabled, if necessary, to assert itself against the latter, for the liquidation of those responsibilities. Given the hypothesis that full political freedom is not to be bestowed upon India, the deduction drawn above is unavoidable. The irresponsible executive must be also a superior force in the country's governance.

The power must be rarely used

That certification is meant to be a real power and not a mere ornamental possession is amply proved by the experience of the last sixteen years. It appears to have been interpreted as a normal instrument which can be freely used from day to day. Yet, a promiscuous and constant exercise of such powers cannot fail to prove irritating to Indian sentiment. The goal of British policy in India is stated to be the development of responsible government in all its fulness at an early date. Therefore, the greatest restraint must be scrupulously observed in making use of extraordinary powers, if their existence is necessary at all. The freedom of judgement and discretion enjoyed by a single individual, whether the Governor-General or Governor, must be definitely circumscribed and limited. A democratic appearance alone is not enough; the reality of popular control is infinitely more important.

Ordinances

Besides possessing these powers, the Governor-General is also authorized to make and promulgate ordinances for the peace and good government of British India or any part thereof. An ordinance so made has the force of law as much as if it were an Act passed by the legislature. The period of its application is not to exceed six months at a time, though it can be renewed for a further succession of such periods. (An ordinance is thus a legislative

measure, partaking of the character of an Act, but emerging from the head of the executive in his executive capacity. It is of course intended to be very rarely used. When the legislature is not in session and a great emergency suddenly arises, remedial measures can be immediately adopted by the exercise of such reserve powers. The recent Civil Disobedience Movement is inseparably associated in the public mind with the promulgation of a large number of ordinances by the Governor-General.

§5. STATUS AS VICEROY

He represents the Crown

The Governor-General of India is not only the head of the administration of the land. Over and above that, he personifies in himself the British sovereign and represents his master in the unavoidable absence of the latter from the land of his governance. He therefore enjoys all the dignity and prestige and special privileges which the sovereign himself would enjoy if he chose to stay in India. He has the prerogative of mercy and pardon. On behalf of his sovereign, he receives homage from the Indian princes. To them, he symbolizes the Crown and all the unlimited sovereignty of the Crown. The emphatic declarations of Lord Reading in his communication to the Nizam are significant of this sovereignty. He represents His Majesty in his dealings with foreign princes. All the grandeur and paraphernalia of royalty attach to him as his master's deputy. The sense of sublimated detachment that pervades the environment of kingship also pervades, to a certain extent, the environment of the accredited viceregent of the king.

§6. INFLUENCE

His influence

That the cumulative influence of this lofty official upon the administration of India is bound to be immense is an obvious truth. His high social status and rank, his aristocratic connexions, occasionally his political influence as an active party leader are circumstances which give him an initial lift in comparison with his would-be colleagues in the bureaucracy of India. His large powers, ordinary and extraordinary, as the head of the administration, his exalted social status as the direct representative of the sovereign, the large and lucrative patronage in his possession and the premium that is naturally enjoyed by the freshness and comprehension that are attributed to him as an intelligent outsider, are factors which give him a supreme

eminence in the Government. A heavy responsibility is believed to devolve upon him in maintaining the safety of the British Raj.

The combination of all these formidable circumstances raises the Governor-General of India head and shoulders above the other subordinate officials in the land. If he is endowed with a master mind and an assertive temperament, his views can colour every department of administration. If he happens to be a man of convictions and capacity, his personality is bound to permeate all important matters of policy and detail that come to be disposed of by any one of his colleagues in the Executive Council individually or by all of them collectively.

Comparison with the Prime Minister

The Prime Minister of England, presiding over the British Cabinet, appears to be only first among equals, a leader of his peers. The difference between him and his colleagues is created and tolerated only for the exigencies of smooth constitutional working. The Viceroy of India has the appearance more of a superior than of an equal. Constitutionally speaking, the distance between him and his colleagues is far greater and much more fundamental than that between the Prime Minister and his colleagues in the Cabinet.

B. The Central Executive Council

§1. COMPOSITION AND FUNCTIONS §2. METHOD OF WORKING §3. COMPARISON WITH BRITISH MINISTERS

§1. COMPOSITION AND FUNCTIONS

Creation in 1774

The Regulating Act of 1774 which created the office of Governor-General also created an Executive Council of four members to assist him in the performance of his responsible duties. Subsequent Acts passed by Parliament modified the constitution of this body from time to time. The number of its members was increased in consequence of an increase in the work of government following the expansion of British power in India. The present structure of the Executive Council is prescribed and shaped by the Act of 1919. The details of its relevant provisions have now to be studied. It may be noted that the Executive Council as such will soon vanish from the Indian constitutional picture. When the Federation of India comes to be inaugurated, its place will be taken by a group of Counsellors and by the Federal Ministry.

Composition

The number of members of the Executive Council are 'such as His Majesty thinks fit to appoint.' At present, it consists of eight members, including the Governor-General and the Commander-in-Chief who is an extraordinary member. They are appointed by His Majesty by warrant under the Royal Sign Manual. At least three of them must be persons who have been for not less than ten years in the service of the Crown in India. One must be a barrister of England or Ireland or an advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. Under the Morley-Minto Reforms of 1909, an Indian was appointed for the first time to be a member of the Council. From 1921, the number has been increased to three of whom one is generally expected to be a Mohammedan. In strict legal theory, there could be no objection to all the members of the Council being Indians, provided they are possessed of the requisite qualifications! But the actual practice completely falsified this theoretical possibility till as late as 1909.

Functions and powers

In the Governor-General in Council are vested the superintendence, direction and control of the civil and military government of India, subject to the orders of the Secretary of State. Every Local Government, subject to the clauses of the Government of India Act, has to obey the orders of the Governor-General in Council and has to keep him constantly and diligently informed of all matters of importance in its administration.

Subject to restrictions imposed by the Secretary of State in Council, the Governor-General in Council is empowered 'to purchase and sell and mortgage property, to borrow money, and to execute assurances for the purposes'. The same authority can, with the previous sanction of His Majesty, signified by the Secretary of State in Council, constitute a new province under a Governor or Deputy Governor or Lieutenant-Governor; can declare any tract to be 'backward' and make special arrangements for its administration; can create Executive Councils for Lieutenant-Governors' provinces and determine the number and qualifications of their members; can, by notification, take any part of British India under the immediate authority and management of the Governor-General in Council and can alter the boundaries of provinces.

The Governor-General in Council can also constitute local legislatures for Governors' or Commissioners' provinces; can alter the local limits of the jurisdiction of Indian High Courts;

can appoint additional judges to the High Court for a period not exceeding two years and appoint a judge to act as Chief Justice when a vacancy occurs and till the vacancy is permanently filled. The Governor-General in Council may not declare war or commence hostilities or enter into a treaty without the express order of the Secretary of State.

In any emergencies when hostilities have been already commenced or preparations for them have been actually made against the British Government in India, he can declare war and immediately send intimation to the Secretary of State. The Governor-General in Council has, by delegation, powers of making treaties and arrangements with Asiatic states, of the exercise of jurisdiction and other powers in foreign territory, and of acquiring and ceding property. He also enjoys such powers, prerogatives, privileges, and immunities appertaining to the Crown as are 'appropriate to the case and consistent with the system of law in force in India'.

Tenure and leave

The tenure of office of a member of the Executive Council has been fixed by a well-established custom to be five years. By the Leave of Absence Act of 1924, the Governor-General in Council may grant to any member leave of absence for urgent reasons of health or private affairs. Such leave cannot exceed four months and cannot be granted more than once during his tenure of office. Suitable leave allowances have been provided for under rules made by the Secretary of State in Council.

§2. METHOD OF WORKING

Before 1861

Originally the Executive Council of the Governor-General 'worked together as a board and decided all questions by a majority of votes'. There was no systematic distribution of work among its members. Every question that came up for the disposal of the Governor-General in Council was disposed of by the Council as a whole, sitting collectively. There was no division of labour, no allocation of departments to individual members. This sort of mass work entailed an enormous delay and began to prove increasingly difficult as the nature of Government functions began to get more and more complex and their scope began to get wider and wider. The appointment of special members for Law and Finance in 1833 and 1861 respectively was an acknowledgement of the unworkable nature of collective Council work. Lord Canning abandoned the system altogether and carried to a logical conclusion the principle that was initiated in 1833.

Portfolios

He distributed the ordinary work of the departments among the members and laid down that only the more important cases were to be referred to the Governor-General or dealt with collectively. This is what is known as the portfolio system, and it has continued to the present day. Under this system, each member, in regard to his own department or departments, has the final voice in ordinary departmental matters. He is Councillor and administrator together. Any subject of special importance or one in which it is proposed to overrule the views of a Provincial Government must be referred to the Viceroy; so also matters which originate in one department but also affect other departments. The members generally meet in Council once a week and discuss questions which the Viceroy desires to put before them or which an overruled member might desire to be discussed by the Council. In any difference of opinion, the decision of the majority ordinarily prevails, the Viceroy having an overriding veto in exceptional circumstances.

Present Portfolios

At the present day the portfolios in the Executive Council are distributed as under :

(1) Viceroy : Foreign and Political Departments.

(2) Commander-in-Chief : Army and Defence.

(3) Home Member : General supervision over matters affecting the Indian Civil Service, internal politics, Jails, Police, Law and Justice.

(4) Finance Member : Finance.

(5) Member for Communications.

(6) Law Member : the Legislative Department.

(7) Member for the Departments of Education, Health and Lands.

(8) Member for Industries and Labour.

The Secretaries

Immediately subordinate to the member in charge is the officer known as Secretary. He is in charge of the departmental office. His position corresponds, as the Decentralization Commission has pointed out, to that of a Permanent Under-Secretary of State in the United Kingdom. There is, however, this difference. In India, the Secretary is allowed to be present at the meetings of the Executive Council to furnish any detailed information that might be required regarding his own department. Besides, he is required to attend on the Viceroy usually once a week and to discuss with him all matters of importance arising in his department. He has the right of bringing to

the Viceroy's special notice any case in which he considers the concurrence of the Viceroy with the member's action or proposal is necessary. His tenure of office is usually three years.

Thus the constitutional position enjoyed by him is unique. He is a subordinate, having the special privilege of direct access to the superior of his immediate superior. He can create a prepossession in the mind of the Viceroy about any matter in his department without the knowledge of the member in charge. The system is a remnant of the old days when it was considered desirable to keep a check over the actions and the departmental independence of the Executive Councillors. The Governor-General as the head of the administration was therefore empowered to be directly in touch with departmental working through the Secretaries. Indian public opinion is inclined to condemn this constitutional anomaly as likely to encourage mistrust and misunderstanding, particularly after the admission of Indians to the Executive Council.

Unique Position

§3. COMPARISON WITH BRITISH MINISTERS

It would be clear to a student of the British constitution that the British Minister differs essentially from a member of the Indian Executive Council. The former is a politician first and an administrative officer afterwards. Indeed he comes to be the latter because he has been the former. English Ministers are not lifelong bureaucratic servants. Persons in the service of the Government are deliberately precluded from taking seats in Parliament and therefore in the Cabinet. Things are different in India. A few Indian public men may find a place in the Council, if chosen to fill an appointment by the Viceroy. But most members are selected from the successful servants in the administration. Elevation to the Executive Council and enjoyment of the fine prospects that it offers are among the principal attractions to the British who seek careers in India.

British Ministers are politicians

The initiative and independence that would characterize a body like the British Cabinet which inhibits bureaucratic officials from becoming its members are naturally absent among the Executive Council as a whole in India. Nor can all its members possess that diffused sense of equality which permeates the relations of the English Ministers with their chief, the Prime Minister. The important patronage in the

Peculiarity of the Executive Council

hands of the Governor-General is not a negligible factor in this connexion. There are still higher rungs in the official ladder than an Executive Councillorship, which may indeed lead to them. Therefore, in boldness, as in wider comprehension, the British Cabinet is bound to compare more favourably than the Indian Council, with its tendency to be more subdued in outlook and spirit.

Influence of the Governor-General's personality

Much of course depends upon the head. He is a stranger to the land which he is sent out to rule. He sets out to work with a bureaucracy which has crystallized traditions of its own and has acquired a reputation for itself. It supplies the expert knowledge about men and things in India, obtained after prolonged years of service on the spot. The claims of such a body to be recognized as an authoritative and correct guide may not be lightly disregarded but even positively admitted by commonplace mediocrity. At such times, it is not the Viceroy but the Council which really rules. However, to a Viceroy endowed with a distinct individuality and vigour of will, the constitutional atmosphere of the Council would appear to be congenial to the development of his personal influence and the acceptance of his lead in all matters of policy and detail.

Value of the Executive Council

The assistance of the Executive Council is indispensable to the Viceroy in all circumstances. It maintains the continuity of administration. And except under abnormal circumstances no Viceroy would think of exercising his extraordinary prerogatives in order to override the declared opinion of the Executive Council. As J. S. Mill said, the advisers attached to a powerful and self-willed man ought not to be put under conditions which would reduce them to a cipher.

CHAPTER X

THE CENTRAL LEGISLATURE

A. Some General Information Concerning Legislatures

§1. Importance of the legislature in modern constitutions §2. The functions of a legislature §3. Franchise and electorate §4. The bicameral system

§1. Importance of the legislature in modern constitutions

The legislature controls the executive

In all progressive western countries the legislature has now acquired outstanding importance. At first it was predominantly, if not purely, a law-making body. Its function was to pass measures which required the force of legality. The business it transacted pertained primarily to bills and Acts. From this position of comparative simplicity the legislature has now evolved into a body which exercises general control over the administration.

The principle and practice of political responsibility move round the pivot of the legislature's supreme dominance over the executive. The powers and functions of the legislature are the touchstone which assesses the degree of popular control that obtains in a constitution. Modern legislatures are not only law-making bodies; they vote grants of the necessary money; they practically appoint the Ministers direct, control and modify their policy, and in case of a disagreement, even dismiss them. The daily routine of departmental management is not, indeed, looked after by them, but the general line of administrative action and the general principles pervading the policy of the state are all inspired and dictated by their opinions and views. In other words, an all-round control of the state vests in the legislature in a form of government which is described by constitutional writers as responsible. The English Cabinet, for instance, is the product of Parliament and completely amenable to it.

Structure of the legislature

This unique importance that has progressively come to be attached to the legislature in modern days is the natural consequence of the changed character of the structure of legislative chambers. They are now elected bodies largely reflecting popular opinion and therefore carrying with them the

invincible prestige of being the accredited mouthpieces of the whole nation. To judge the progress in democratization and responsibility of any form of polity it is necessary only to find out the extent and reality of the legislature's predominance over the executive. The more complete the subordination of the executive, the greater is the advance in the direction of responsibility. Legislatures in India, whether in the Central Government or in the provinces, have to be judged henceforth by this criterion.

§2. THE FUNCTIONS OF A LEGISLATURE

i. Legislative

A legislature's functions and powers can be divided into different parts. For instance they can be described separately as referring to legislation or to administration or to finance. The meaning of the first of these is clear on the surface. No measure can obtain the force of legality unless it is passed by the legislature. Everything that is incorporated into the law of the land and obedience to which is demanded from the citizens, has to receive its sanction before it can be so incorporated and enforced. Unless otherwise provided, no bill which is not voted by the legislature can have application in a court of law.

ii. Administrative

The control over administration is exercised in various ways : (1) by moving resolutions, (2) by moving votes of no confidence, (3) by moving adjournments, and (4) by asking questions and supplementary questions to elicit information about departmental details.

Resolutions

(1) On any matter of public importance the legislature may express a clear opinion after having discussed its issues thoroughly. This expression of opinion is in the form of a recommendation to the Government. It has no binding legal force. It is not a law and has not to pass through the elaborate procedure to which every bill is subjected before its final consummation into an Act. Yet the expression of opinion has a clear value of its own. It makes an unambiguous and emphatic declaration of the views of the elected representatives of the people. It therefore serves as an indicator which records the strength and the direction of popular opinion. A clear indication of the popular will cannot be ignored by any executive Government having a sense of responsibility. It serves to guide correctly, if not to control rigidly, any steps that may be contemplated by the executive authority.

Vote of censure or no confidence

(2) A vote of censure or no confidence is a most direct way of expressing disapproval and of exactly locating the agency which it is desired to condemn. In a purely responsible administration occasions for votes of censure are rare, for, before matters come to that pass, numerous indications are given of the existing displeasure, and they are immediately understood. This right is of particular use in those forms of government where the executive cannot be removed from office by the legislature. A direct and emphatic condemnation of the actions of irresponsible officials is likely to serve as a moral restraint upon them.

Adjournments

(3) Adjournment motions are intended to direct the attention of the house and the Government to any extraordinary happening involving the public weal that might take place during the actual session of the Council or that may have taken place only a short time prior to the session. Any member may beg leave to move that the regular business on the agenda be temporarily suspended and that the house do discuss the extraordinary occurrence, provided the president allows the motion. He may not do so in case he feels that the matter, for the discussion of which a temporary suspension of the regular agenda is requisitioned, is not of sufficient importance to justify the suspension. Motions for adjournment save the discussions of the chamber on prominent and burning topics of the day from being stale and more or less artificial.

Interpellations

(4) The power of asking questions and supplementary questions is extremely valuable. It serves to throw important sidelight on the administration by enabling members to elicit information regarding routine departmental management. It is useful in exposing to publicity any unjust or tyrannical abuse of the freedom of judgement and discretion that have necessarily to be allowed to the executive. Any member of the legislature can put a question on a matter of public interest, subject to its disallowance by the president. If the answer given proves unsatisfactory, either the member who puts the question originally, or any other curious or dissatisfied member may put further supplementary questions. This at times almost approximates to a regular cross-examination. Details which are too trivial to be discussed in the form of resolutions and which are too important to be completely ignored can be brought for public criticism through the exercise of the power of interpellation.

Publicity is the greatest check and the greatest corrective to the waywardness of all normal Governments. Publicity is of still greater value when the form of government is an irresponsible bureaucracy. Resolutions, adjournments, votes of censure, questions and supplementary questions are instruments of publicity. As long as the composition of the Government has not become abnormally mechanical and unhuman, the fear of public criticism and public exposure is bound to prove a very salutary restraint upon action that might be taken by Government officials.

iii. Financial.

The last and most important power that a legislature can enjoy is control over the purse. The great constitutional struggle in England throughout the Stuart period, and even earlier, centred round the disputed question whether the King could levy taxes without the consent of the people and spend them as he liked, irrespective of the wishes of Parliament. The most glorious achievement of the popular party in the struggle was the emphatic and decisive establishment of the principle that the money which the King's authority wanted to collect from the people by way of taxation must be voted by the representatives of the people assembled in Parliament. Parliament also decided the manner of its collection and the direction of its expenditure. The essence of democracy lies, among other things, in this type of undisputed control over the purse that is exercised by the people through their chosen representatives. The real power of any legislature is to be measured by the degree of the monetary control it enjoys. The British Parliament—or more correctly the House of Commons—is the sole authority for and the sole custodian of the finances of the Government of Great Britain. The executive can get only as much money as is voted by Parliament and has to spend it on those purposes only for which it is specifically voted. Finances are to the state what the life-breath is to the body, and in responsible forms of government entire control over them is vested in the legislature.

§3. FRANCHISE AND ELECTORATE

Modern democracies are representative

Democracies in modern days are representative. A direct democracy is a physical impossibility, apart from other considerations of its advantages or disadvantages. Under representative government, the affairs of the state are entrusted to a few people chosen by the citizens. In an ideal state of things, every citizen, unless positively disqualified, has the right

of voting in the election of such persons. The smaller the number of disqualifications and the larger the number of persons who are authorized to give their vote, the more representative becomes the character of the Government.

The right of giving a vote is described, in political science, as the franchise. Persons to whom the franchise is given are described as the electorate or the constituency. The electorate is not identical with the total body of the citizens. It contains only those persons who are allowed to take part, indirectly, in the administration of the land.

Disqualifications

What sort of persons should be excluded from the enjoyment of this political privilege? On the answer to this crucial question depends the degree of the democratic character of a democracy. Certain disqualifications are obvious. Children are not, for instance, in a position, intellectually speaking, to understand the problem of government and to exercise the franchise. Lunatics come in the same category. Criminals who have been convicted by a court of law for crimes against society cannot evidently be permitted to have any share in the formation of the Government. The same viewpoint holds good in the case of bankrupts. Even in countries where there is universal franchise these disqualifications are accepted as necessary and desirable.

Adult suffrage

Most of the representative Governments in the past had more restrictions than these on the exercise of the franchise. Women, for example, were disqualified on account of their sex even if they possessed the other necessary qualifications. Poor persons, labourers and wage-earners were also regarded as unfit to possess the right to give a vote. Ownership of a certain minimum amount of property or income has been almost an invariable qualification to entitle persons to the vote. The trend of modern times is to reduce the amount to as low a figure as possible so as to include in the electorate the largest number of citizens.

Some western countries have abolished the property qualification altogether. They have conferred the right to vote on all citizens, men and women, who have reached a certain age, and who are not debarred otherwise, as for instance on grounds of lunacy, treason, bankruptcy, etc. Conditions in India may be different, but the Indian electorate is to be judged from the same point of view. The Nehru Report had advocated the introduction of adult suffrage.

Electorates in India

It would be pertinent to describe here the different kinds of electorates that exist in India at the present day. They are mainly based on qualifications either of property or of community or of special interests. Residence is also an important factor.

General electorates

A general electorate is one in which no account is taken of the race or community of the voter. The electoral law prescribes certain property and other qualifications, and all citizens, irrespective of caste, creed and religion, who possess them, are entitled to get a vote. Residence in a definite territorial area, which defines the geographical limits of the electorate, is of course considered essential.

Non-Mohammedan constituency

In India, the nearest approach to a general electorate is found in the non-Mohammedan constituency. It consists of all enfranchised persons, other than Mohammedans, in any electoral area. It may thus be composed of Hindus, Parsis, Jews, Christians and others, all placed together in one collection, provided the conditions about the franchise are properly satisfied.

Communal electorates

The concept of a communal electorate is different. Here the very first condition which is essential to entitle a person to acquire a vote is that he must belong to a particular community. Being a member of that community he must further satisfy the conditions of the franchise as they may have been fixed by the electoral law. Persons not belonging to that community are entirely excluded from the electorate.

In India, communal electorates have been conceded to the Mohammedans throughout the land, to the Sikhs in the Punjab and to the Europeans in important cities and plantation areas. The voters who vote in these constituencies and the candidates who contest these seats must belong to the Mohammedan, Sikh, and European communities respectively. Others can neither vote nor stand for election in these constituencies.

Mixed electorates with reserved seats

It is possible to devise an electorate which is a compromise between the general and communal principles and combines both of them. That is known as the system of mixed electorates with reservation of seats for particular communities. In such a system it is not necessary that the voters or electors must belong to a particular religion or race. The electorate contains names of all those who possess the requisite

franchise. It is a miscellaneous mass of different creeds and communities. But it is also laid down that out of the total number of seats which have to be filled by election a certain number must be held by members of a particular community.

An illustration will make the point clear. Suppose a territorial constituency has been assigned three seats in the legislature. It may be prescribed that at least one of these three seats must be held by a Mussulman, though the electors are composed of both Mussulmans and non-Mussulmans.

It may happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all non-Mussulmans. In that case the third of such candidates is not declared to be elected; but a Mussulman candidate, who may stand much lower in rank in the numerical order but who is the first Mussulman standing immediately next to the second of the above, is declared successful.

On the other hand, it may also happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all Mussulmans. The election of every one of them is, in that case, considered to be perfectly valid. In addition to the one seat reserved for them, they are thus enabled to capture the remaining two.

In a communal electorate the candidate has to win the confidence of only the members of his community. In a mixed electorate with reservation of seats, he has to look for votes even outside his community and endeavour to be popular with all.

In India, the concession of the privilege of reservation of seats for their own community was granted to the Maratha caste in the Bombay Deccan in elections to the old Bombay Legislative Council. The Nehru Report advocated the extension of the same system throughout the whole country in place of the present communal electorates. A considerable body of enlightened public opinion also supports the same view in the interests of a consolidated Indian nationalism.

Special electorates

Besides these types there is another type known as 'special constituencies'. These are intended to represent certain special interests in the country in their own right and independently. The landed aristocracy, trade and commerce, and educational institutions like universities are all special interests which have to be properly safeguarded and which are given special recognition as entities useful and beneficial to the state. They are

therefore very often formed into constituencies by themselves. Such a constituency consists of all persons who are united by the tie of common interest, irrespective of community or race. They are thus different from communal constituencies.

In India several universities have been given the right of sending their own representatives to the legislature. Similarly, European Chambers of Commerce, Indian Merchants' Chambers and Bureaus, Millowners' Associations, Sardars and Inamdars have been set up as constituencies by themselves. Every person who is a recognized constituent of these bodies can vote in elections which are held for the return of their representatives.

Why communal electorates are created

Communal electorates were first introduced in India in 1909 as the most effective, convenient and satisfactory means of protecting the interests of minorities. One of the greatest imperfections and dangers of democracy is the possibility of its degenerating into a mere tyrannical rule of the majority over the minority and the suppression of the latter. This danger is considered to be more probable and more acute in a country like India where the minority is demarcated and distinguished from the majority not only on social or political questions but on grounds of difference in religion and historical antipathy. These considerations, it is said, make it necessary to provide some effective safeguards against the possible danger. The one which appeared to be the most satisfactory and convenient to Lord Morley in 1909 was the splitting up of the general Indian electorate into two or more parts on the principle of race. To such exclusively racial electorates was given the right of sending representatives from amongst themselves. They were generally formed according to the numerical proportion of the race to the total population in a specified area.

Their evil effects

Communal electorates have a tendency to emphasize and perpetuate the existing racial and religious differences. They are subversive of a sense of comprehensive nationality based on the community of political interest. By putting a deliberate premium upon one's particular community they positively discourage any tendency to fusion of the separatist predilections of the different communities, and encourage a narrower and selfish angle of vision. However, communal electorates are an accomplished fact in Indian polity, and it is extremely difficult to undo what has been done. They have acquired the strength of a vested interest. The minority is reluctant to

part with a privilege which has been in its possession for years. It will be a long time before other more scientific and less objectionable devices to protect the interests of the minority are suggested and the latter is persuaded to accept them.

The electoral roll

All persons born in the state are not automatically given the right to vote even under the system of adult franchise. And when the latter is not in operation, certain property and other qualifications are prescribed by law to determine the right to vote. A list is made, for a specific territorial area, of all persons who possess those qualifications and are therefore entitled to exercise their vote. This list is called the 'electoral roll'.

A preliminary and tentative edition of the electoral roll is published by the Government and kept open for public inspection for a stated period. It may happen that names of persons, who by their possession of the requisite qualifications are entitled to get a vote, have not been included in the electoral roll through oversight or mistake. Such omissions can be brought to the notice of the collector or other authorized official and rectified by him. A revised and final edition of the electoral roll is then published and only such persons whose names are included therein are allowed to vote at the time of election.

§4. THE BICAMERAL SYSTEM

The upper house and the lower house

In the bicameral system, the legislature is composed of two separate chambers. One of them is known as the upper house or the second chamber, and the other is known as the lower house or chamber. The electorates of the two houses are not the same. Their powers, functions and political status are not identical. They are formed to fulfil different purposes and embody different ideas.

The upper chamber is intended mainly to represent the vested interests and the wealth of the land. It consists of the members of the historical aristocracy, big landowners, wealthy merchants and other propertied classes. A little sprinkling of a few intellectual and public workers is also usually added to it. On the other hand, the lower chamber is more democratic in character. It is expected to include the poorer element in the community and therefore the franchise for its election is deliberately kept low.

The lower house has larger powers

Because the lower chamber is more representative and democratic in its structure it is usually invested with greater political power and control. It is considered only fair and natural that the body which reflects in a very great measure the nation's will should possess the dominant authority in the state. For this very reason the British House of Commons is empowered to make and unmake the executive Government in that country and to dictate to it.

The upper chamber is intended to amend and revise

The upper chamber represents only the privileged few who form the higher strata of society. Its members are not expected to be in the closest touch with the demos, or to give expression to its cherished ambitions and patiently borne sorrows. They are therefore precluded from exercising any effective control over money matters either on the income or on the expenditure side. Even in subjects other than finance the tendency of modern days is to look upon the second chamber as a brake on the impulsiveness of democracy. It is entrusted with the duty of amendment and revision. It is empowered to compel reconsideration of a measure which may have been passed by the lower chamber merely in a fit of frenzy. However, it is not intended that a body which represents only the aristocracy of the land should be permitted to make of itself a permanent hindrance to a many-sided national progress as visualized by the large majority of citizens who are electors.

Controversy about the need for second chamber

Political thinkers are not agreed on the question as to whether two legislative chambers are necessary or desirable in a unitary state at all. There are not a few who hold the heterodox opinion that a second chamber is an unwanted superfluity and a nuisance. They feel that its existence involves an unnecessary reduplication of governmental work and consequently an enormous waste of time, energy and money. To such critics it appears that the alleged indispensability of the second chamber is not based on rational conviction but on prejudices engendered by the superstition of constitutional orthodoxy.

Its introduction in India

The framework of Indian polity has been unitary since the Regulating Act. Even the Montford Reforms did not make it federal. However, the Act of 1919 introduced the bicameral system in the central legislature of India by the creation of the Legislative Assembly and the Council of State. It may be conceded for

the sake of argument that the dangers of an upper chamber are not likely to become really serious in a free nation. But its blind imitation in a subject country may prove perilous to national advance towards autonomy.

The Indian Government has not yet been made responsible to the Indian people. Conditions in this land are not therefore similar to those that obtain in a self-governing Dominion or a sovereign state. In the psychological and material environment of a conquered country the existence of an oligarchical legislative house may prove ruinous to political progress. It may detract from the growth of national solidarity.

B. The Central Legislature

§1. THE COUNCIL OF STATE §2. THE LEGISLATIVE ASSEMBLY §3. PROCEDURE IN THE CENTRAL LEGISLATURE §4. CONFLICTS BETWEEN THE TWO CHAMBERS

Origin and growth

The East India Company had been given the power of making rules and regulations for the proper conduct of its business and for maintaining discipline and good behaviour among its servants. As long as its activities were purely commercial, this power was quite sufficient. But after the Company began to fight wars and to build up an empire in India, its problems and requirements became entirely different. Government over a people naturally involved the duty of framing elaborate laws affecting every aspect of the larger social life. It was a responsible and difficult task, and its performance had to be entrusted to a well-defined expert authority.

The growth of the Indian law-making body, from the Regulating Act to the introduction of the Montford Reforms, has been briefly outlined in a preceding chapter.[1] The legislature of that period was merely an enlarged edition of the Executive Council, merely an appendage of bureaucratic authority, with no effective power whatever. Then came the War and the famous announcement of 20 August 1917. The changes introduced by the Montford Reforms were conceived in the faint and shadowy background of the ideal of responsible government.

Two chambers

The Act of 1919, therefore, separated the legislature from the executive and conferred on it the status of an independent existence in the Indian constitutional structure. A bicameral system was created to take

[1] See pp. 9-15.

the place of the old Imperial Legislative Council. The lower chamber was called the Legislative Assembly, and the upper chamber the Council of State. A detailed study of these two chambers is made in the following sections.

§1. THE COUNCIL OF STATE

Constitution

The Council of State in India corresponds to the upper chambers of other countries. The total number of its members is 60. Out of these, 33 are elected by the different constituencies and 27 are nominated by the Government. Of the nominated members, not more than 20 are to be officials.

The Council of State is a part of the central legislature, and its electorate is comprised within the territorial limits of the whole of British India. Elections are not, however, held on a general ticket throughout the area. The existing political divisions are taken as units, and seats are assigned to them approximately in proportion to their population, their territorial extent and so on. The total elected number of thirty-three is thus distributed among the various provinces which are taken as electoral units. A similar distribution also takes place of nominated seats.

Franchise

The great diversity of political and economic conditions in the various provinces makes a uniform franchise for a chamber of the central legislature almost an impossibility. The franchise for the Council of State therefore is different in the different provinces. The variation is, of course, intended only to equalize the conditions of the franchise as far as possible by taking into account the particular economic or political situation of each province and correcting and modifying the franchise in the light of those conditions. This body is intended to serve the purpose of an upper and revising chamber and therefore to consist of persons who have large vested interests in the country. They are expected to be conservative enough to stand above the radical freaks of a democracy. The qualifications are therefore so contrived as to ensure that the majority of the members will belong to the richest strata of society, only a small number will be comparatively poor but distinguished persons, with public service or learning to their credit.

In the Bombay Presidency (1) persons who pay an income-tax on an annual income of not less than Rs. 30,000, (2) persons who are owners of land, the land revenue dues of which are not less than Rs. 2,000 per year, and (3) persons who are Sardars or Talukdars or Dumaldars or Inamdars and

recognized as such by the Government are entitled to a vote. The effect of this high franchise is clear. It excludes any one who is not very wealthy or who is not a scion of an aristocratic family. The intellectual element is supplied by the further provisions that (4) all persons who have been once president or vice-president of a municipality, (5) president or vice-president of a district local board, (6) persons who have been members of the senate or fellows of a university, (7) persons who had been once members of any legislative body in India, (8) persons who enjoy the distinction of the title of Mahamahopadhyaya or Shams-ul-Ulema, have also a right to vote.

It is an oligarchic body

With the exception of this small intellectual and to a certain extent democratic element, the Council of State has a predominantly oligarchical character. It therefore possesses all the characteristics that are the distinguishing features of oligarchy. It is conservative in its very elemental formation. It is always suspicious of progress. Its outlook is generally extremely narrow. Representing as it does the vested interests in the state, it is inclined to be very much self-centred and self-protecting. Not being returned by an extensive electorate, it has a tendency to be exclusive in its outlook and to be left unaffected by the currents of popular opinion. The small elected majority of five is not calculated to counteract the consequences of the oligarchical nature of the body. The tenure of the Council of State is five years.

President

For any legislature the position and status of the president are matters of important consideration and privilege. In the case of the old Supreme Legislative Council the Governor-General was the ex-officio president. After the Montford Reforms this privilege was taken away from the Governor-General. The president of the Council of State is nominated by the Governor-General, and from the time of its inception till very recently he was invariably an official. At present, however, a non-official has been selected to hold the office. The Council of State is denied the privilege of electing its own president, a privilege which is enjoyed by the Legislative Assembly.

Functions and powers
i. Legislative

Reference has already been made to the different kinds of powers which a legislative chamber can possess. The Council of State has been given full legislative powers. Every bill which has to be passed into an Act must receive its assent. Any member, official or non-official, may introduce a bill for

the consideration of the house which may or may not pass it. No measure can be incorporated into the law of the land unless the Council of State has given its sanction to it. It enjoys in this respect the same powers as are enjoyed by the Legislative Assembly.

ii. Administrative

It can exercise control over the administration by moving resolutions or adjournments or votes of no confidence or by putting questions and supplementary questions. Fifteen days' notice is required for a resolution. The Governor-General can disallow any resolution if he feels it necessary to do so in the public interest. Motions for adjournment must refer to definite matters of urgent public importance and of recent occurrence. Questions and supplementary questions to elicit information on points in the routine of administration can be put by members to the executive officials. On matters affecting relations of the Government with foreign states or Indian Princes or on those matters which are *sub judice* no questions can be asked and no resolutions can be moved. The president can disallow a question or supplementary question. He can also disallow a motion for adjournment.

iii. Financial

Lastly, the financial powers of the Council of State have to be understood. The Council of State is avowedly a body of elders, oligarchical in character and serving as an upper chamber. It has only a remote acquaintance with the beat of the popular pulse and only a remote affinity with popular sentiments and desires. The second chambers in western countries do not enjoy the same thorough control over the nation's purse as the lower chambers possess. They are regarded as inherently unfit to exercise this power because of their vested interests, because of their narrow representative character and because of the general conservative—if not stagnant—outlook that pervades all their thoughts and acts. The House of Lords in England, for instance, cannot initiate any money bill, and after the legislation of 1911 cannot claim equal rights with the lower chamber in financial affairs; it has been disarmed of its power of persistently opposing and obstructing the passage of the Finance Bill which has been passed by the lower body, the House of Commons.

Following this sound constitutional precedent, the Indian upper chamber is denied certain privileges in financial matters which are exclusively granted to the lower chamber. The budget is to be presented to both bodies on the same day. Both of them can discuss it thoroughly. But the voting of

particular grants demanded by the heads of various departments is a special duty and privilege of the Assembly. They are not submitted to the Council of State after they are voted upon by the Assembly. The latter body is in this respect supreme, subject to the certifying veto of the Governor-General.

After the voting of grants, ways and means of revenue have to be considered. Money has to be found for the expenditure that is voted, and all proposals for taxation are embodied in a bill known as the Finance Bill. This Bill has to be passed by the Assembly and is then sent up to the Council of State for its assent like any other legislative bill. The Council may pass the Bill as it is or introduce amendments which must be acceptable to the originating chamber. In a deadlock, the Governor-General's extraordinary powers can be exercised for preserving the stability of the administration.

The Council of State's financial powers are therefore as under. The budget is presented to it at the same time as the Assembly. It has the right of having a general discussion on the budget and on the financial policy of the Government. Its legislative powers being co-ordinate with those of the Assembly, the Finance Bill, which contains all proposals of taxation, has to be submitted for its assent and can be modified or even rejected by it. The power which the Council of State does *not* possess is that of voting supplies or grants, demands for which are made by heads of the various departments separately. That is the exclusive privilege of the Assembly.

Criticism of the Council of State

The experience of the working of the Council during the last sixteen years has revealed the usual antagonism and cleavage between the viewpoints of a democratic and those of an oligarchic house. A cent per cent increase in the salt-tax which was proposed in the budget by the Finance Member and which was vehemently opposed by the Legislative Assembly was approved of by the Council of State. Nor could the Assembly's antagonism to the Princes' Protection Bill find any support in the Council of State. In fact, a constitutional crisis in the real sense of the word has not yet occurred. On occasions of conflict between the democratic Assembly and the bureaucratic Government, the oligarchic Council of State has invariably thrown itself on the side of the Government. With its help and by the exercise of his power of certification, the Governor-General has been able to obtain whatever he has wanted.

Even in free countries, a congregation of vested interests is always extremely sensitive and nervous about the progressive democratic impulse, and is opposed to it. In the environment of a conquered country like India the instinct of self-preservation gets immensely strengthened and naturally induces a course of intense caution on the part of the aristocratic class. Critics of the Council of State have every reason to deprecate the formation and constitution of a body which is inevitably drawn into an alliance with the bureaucracy against the popular chamber.

COMPOSITION OF THE COUNCIL OF STATE WHEN THE SIMON COMMISSION REPORTED[1]

Province	Nominated		Elected					
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	Non-communal	European commerce	Total
Government of India ...	11 (including president)	...	...	...	...	...	...	11
Madras	1	1	4	1	...	...	...	7
Bombay	1	1	3	2	...	...	1	8
Bengal	1	1	3	2	...	...	1	8
United Provinces ...	1	1	3	2	...	...	...	7
Punjab	1	3	1	2[3]	...	...	...	8
Bihar and Orissa ...	1	...	2[3]	1	...	...	...	4
C. P. and Berar ...	...	2[2]	...	...	...	1	...	3
Assam	...	...	...	1	...	...	...	1
Burma	...	...	...	...	...	1	1	2
N.-W. F. Province ...	...	1	...	...	...	...[4]	...[4]	1
Total ...	17	10	16	11	1	2	3	60

§2. THE LEGISLATIVE ASSEMBLY

Constitution

The lower and more democratic chamber in the Indian legislature is known as the Indian Legislative Assembly. This body consists of a total of 144 members of which 103 are elected and 41 nominated.

[1] Raport, vol. I, p. 167.

[2] One of these is nominated as the result of an election held in Berar.

[3] At alternate general elections there are three non-Mohammedan seats for Bihar and Orissa and only one Mohammedan seat for the Punjab.

[4] The distribution of nominated seats may be varied at the discretion of the Governor-General but the officials cannot exceed twenty.

Of the latter not more than 25 are to be officials. It is thus evident that both in its size and in the larger proportion of elected to nominated members the Assembly is distinguished from the Council of State. The total number of its members is distributed among the various provinces according to their population and importance. The existing political divisions of the territory of India are accepted as the units for its election; and as it is a body larger and more democratic than the Council of State and possesses a wider electorate, the political sub-divisions of the province are further taken as units for the distribution of seats and for election, unlike the Council of State for which, in the non-Mohammedan constituency, the province as a whole is the unit. Thus the number of elected members representing the presidency of Bombay in the Assembly is 16 out of its elected total of 103. These are elected from constituencies, the territorial extent of which corresponds to the Commissioner's divisions or in the urban constituency of the City of Bombay, to the extent of the city.

Franchise

There cannot be, literally speaking, a uniform franchise for the Assembly throughout India. It varies in the different provinces according to local conditions, an attempt being made to establish similar real conditions in all the provinces. In the presidency of Bombay (1) all persons who pay income-tax, (2) all persons who pay an annual land revenue in an amount not less than Rs. 37-8 in the Upper Sind Frontier, Panch Mahals and Ratnagiri districts and not less than Rs. 75 in the rest of the Presidency, have been given the franchise for the Assembly. It will be seen that this franchise is much wider than that for the Council of State and narrower than that for the Bombay Legislative Assembly. Members possessing a wider outlook, and elected from a wider electorate are required to discuss all-India questions; yet the franchise cannot be too high if a largely democratic and representative character is to be maintained. The Assembly must combine in itself the characteristics of a well-proportioned all-India body, and also a predominantly democratic body, unlike the oligarchic Council of State.

President

It was provided in the Act that the first president of the Assembly would be a non-official member of Parliamentary experience nominated by the Governor-General to hold office for the first four years. After the expiry of that period, he was to be elected by the Assembly from among its own members. As has been stated already,

the president of the Indian legislature before the Reforms was the Governor-General *ex officio*. The president of the Council of State is a nominated member, and had been an official till recently. The Assembly has been given the privilege of electing its own president to guide its deliberations and to uphold its dignity.

Importance of the office of president

The election of its own Speaker has been an important and time-honoured privilege of the House of Commons. The historical evolution of this office is interesting. From being the spokesman and leader of his colleagues and a channel of communication between them and the monarch, the Speaker has now come to be a non-party dignitary vested with all the intricate functions and powers that are necessary to guide the deliberations of a democratic legislative chamber. Constitutionally the Speaker's or president's position carries great responsibilities with it. He presides over the meetings of the body and can adjourn them. He maintains order at the time of discussion, gives his rulings on disputed points of procedure and has to dispose systematically of the business on the agenda. He maintains the dignity of the house by properly controlling members in the use of their language; he has to protect carefully the privileges of the house from any outside encroachment. He admits questions and grants permission to move adjournments. In case of an equality of votes the president can give his casting vote on either side. In short, to have its own elected president is one of the most cherished and one of the most useful privileges enjoyed by a legislature.

That privilege has been conceded to the Legislative Assembly by the Act of 1919. A deputy president has been allowed to be elected from the beginning to preside in the absence of the president. The salaries of both the president and deputy president are voted by the Assembly. Both cease to hold office when they cease to be members of the Assembly and may be removed from office by a vote of the Assembly and with the concurrence of the Governor-General.

Powers and functions—Legislative and Administrative

The powers and functions of the Assembly are to be considered in the light of the classification that has been given already. The legislative powers of this body are co-ordinate with the powers of the Council of State. No bill can be deemed to have been passed into an Act having the force of law unless it is passed by both bodies and has received

the Governor-General's assent. All legislation must therefore pass through the Assembly. It can also move resolutions, votes of no confidence, motions of adjournment, and any of its members can put questions and supplementary questions in the same manner as the members of the Council of State. It can thus effectively establish its supervising authority and critical control over departmental administration and unmistakably indicate its political predilections.

Financial powers

The Assembly has, however, a wider power in the domain of finance than that possessed by the Council of State. The budget has of course to be presented to this body by the Finance Member as he used to submit it to its predecessors in pre-Reforms days. It can also carry on a general discussion of the budget and of the financial policy of the Government as before. But now it does not stop with moving resolutions and dividing the Council on them, as it did between 1909 and the introduction of the Reforms of 1919. For the first time in Indian constitutional history, power is given to the legislature to vote the grants demanded in the budget. This has to be clearly understood.

Pre-Reforms period

The position after 1909 was peculiar. In the first place, the Supreme Legislative Council contained a clear official majority, so that any amounts of money that the Government wanted could be easily got by them by issuing an executive mandate concerning the manner in which official members should vote. And even if an official majority had not existed, matters would not have been much better, for the power that was conceded to the legislature in regard to the budget amounted only to the liberty of expressing a definite opinion on a particular item if allowed to do so. This expression of opinion was not binding upon the Government. It had not the authority of law.

After the Reforms

On the other hand, the power of voting supplies, partially granted under the Montford Reforms, is a different thing. It has been already explained that complete control over the country's finance is one of the essential conditions of Parliamentary government. The latter has not been introduced in even a slight measure in the central administration of India. Yet an endeavour is made to create some shadow of Parliamentary government by conceding to the legislature the privilege of voting a part of the total supplies required by the Government of India. The money required for certain items cannot be spent unless it

is voted by the Assembly or is permitted to be spent by the certification of the Governor-General.

Non-votable items

The proposals of the Government for the appropriation of revenues and moneys are divided into two parts, votable and non-votable. Grants coming under the latter head are not put for the Assembly's vote, nor can they be discussed by the legislature unless the Governor-General otherwise directs. Some very important subjects are included in this group. Interest and sinking fund charges, salaries and pensions of persons appointed with the approval of His Majesty or the Secretary of State, salaries of Chief Commissioners, expenditure under the heads Ecclesiastical, Political and Defence, are all subjects which are non-votable. They cover about 85 per cent of the total expenditure.

Votable items

Proposals for the appropriation of revenues in subjects other than these specified ones are submitted to the vote of the Assembly in the form of demands for grants. The Assembly may assent to or reduce or refuse a grant. Grants that have been thus reduced or rejected cannot be obtained unless the Governor-General feels that they are absolutely necessary for the discharge of his responsibilities towards Parliament and restores them by his power of certification. The Joint Parliamentary Committee made it clear that the power of certification was intended to be real, inasmuch as voting on the budget was not accompanied by any degree of political responsibility, and the Governor-General in Council continued to be solely responsible to Parliament for peace, order and good government in India.

With the creation of an Assembly containing a large elected non-official majority and possessing a reasonably representative character because of its election on a democratic franchise, and with the partial grant to this body of the power of voting supplies demanded by Government officials, it is no wonder that the centre of political importance in the constitution of India has now definitely shifted to the Indian Legislative Assembly. The Council of State does not enjoy the privilege of voting grants. It can only approve of, amend, or reject the Finance Bill.

Finance Committee

Besides, the Assembly has power to appoint a standing Finance Committee (1) to scrutinize proposals for new votable expenditure, (2) to sanction allotments out of lump sum grants, (3) to suggest retrenchment and economy in expenditure, and (4) generally

to assist the Finance Department by advising on such cases as may be referred to it. The Committee consists of ten members elected by the Assembly with a chairman nominated by the Governor-General.

Committee on Public Accounts

At the commencement of each financial year there is also constituted a Committee on Public Accounts, consisting of not more than twelve members of whom not less than two-thirds are elected by the non-official members of the Assembly. The Finance Member is the chairman, having a casting vote in case of an equality of votes. The Committee has to scrutinize the audit and appropriation accounts of the Governor-General in Council and satisfy itself that the money voted by the Assembly has been spent within the scope of the demand granted by the Assembly. It has also to bring to the notice of the Assembly every reappropriation from one grant to another, every reappropriation within a grant, and all such expenditure as is desired by the Finance Department to be brought to the notice of the Assembly.

§3. PROCEDURE IN THE CENTRAL LEGISLATURE

Summons for meetings

The time and place for the meeting of the central legislature are fixed by the Governor-General. A summons to attend the session is issued to each member by the secretary of each chamber.

Oath and president's election

If a legislature is meeting for the first time after new elections, its members are first of all called upon to take the oath. Immediately thereafter they proceed to elect their president, and after he is elected, to elect their vice-president. Both these elections are not considered to be finally valid unless they have been approved of by the Governor-General.

At the commencement of each session the president must nominate from among the members a panel of not more than four chairmen.

In the absence of the president from the house the vice-president presides. If both are absent they can request any one of the panel of chairmen to preside over the meeting.

Allotment of days for business

The Governor-General allots definite days for the transaction of non-official business. On other days only official business can be transacted unless the Government otherwise directs.

A list of business or agenda is dispatched to each member before the commencement of the session.

Quorum

Twenty-five members form the quorum for a meeting of the Legislative Assembly and fifteen members for that of the Council of State.

Questions

The first hour of each meeting is devoted to the answering of questions. For each question not less than ten clear days' notice is required ordinarily. In special circumstances, short-notice questions may be allowed. The president has power to disallow a question if in his opinion it constitutes an abuse of the member's right.

Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. Even such questions can be disallowed by the president.

Resolutions

A member who wishes to move a resolution must ordinarily give fifteen clear days' notice. The resolution must pertain to a subject of general public interest and may be disallowed by the Governor-General. Amendments can be moved by any member to a resolution. Non-official resolutions can be taken only on days allotted for non-official business. Their order of priority is determined by ballot.

Adjournment motions

Notice of such a motion is to be given before the commencement of the sitting on the day on which the motion is proposed. It is to be made both to the president and to the Member of the Government to whose department the motion relates. The Governor-General may disallow an adjournment motion at any time, notwithstanding the consent of the president. An adjournment motion is taken up for discussion at 4 o'clock in the afternoon. The debate must terminate at 6 o'clock and thereafter no question in respect of that motion will be put.

Legislation

Generally, a month's notice is required for leave to introduce a bill. Every bill is required to pass through the following stages :

(*a*) A member who wants to move a bill must first seek leave of the house to introduce it. In doing so he may make a brief explanatory statement. An opposing member is also allowed to make a few remarks to explain his position. Then without further debate the question is put and if the majority of members are in favour of leave being granted, the mover forthwith introduces the bill.

However, the Governor-General may order the publication of a bill in the *Gazette* although no motion has been

made for leave to introduce it. In that case such a motion is not necessary, and if the bill is afterwards introduced it is not necessary to publish it again.

(*b*) After a bill is introduced it is published in the *Government Gazette*.

(*c*) After a bill is introduced and published, the member in charge moves that the bill be read for the first time. Only the general principles of the bill are discussed on this occasion. The discussion of details is not permitted.

(*d*) After the bill is passed in the first reading, any one of the following motions may be made :

(i) that the bill be read a second time;

(ii) that the bill be referred to a select committee; and

(iii) that the bill be published for eliciting public opinion.

If (iii) is accepted, the bill may be referred to a select committee after public opinion has been elicited.

The select committee may hear the necessary evidence and usually has to submit its report, with dissenting minutes, if any, within two months. The report and the minutes are published in the *Gazette* and also circulated among members. It is then presented to the house by the member in charge of the bill with a brief explanatory speech.

(*e*) After the select committee's report is presented, the mover proposes that the bill be read a second time. If this motion is agreed to by the majority, the president has to submit the bill clause by clause separately for the vote of the house. Any member can move an amendment to a clause with seven clear days' notice. Votes are first taken on the amendments and then on the clauses as they originally stood or as they have been amended.

(*f*) After the second reading is finished the mover proposes that the bill be read for the third time. Only verbal amendments are allowed on this occasion and no notice is required for them.

Every bill is required to be passed three times in three readings as described above.

A bill passed by one chamber must be sent to the other chamber and there it has to pass through the same procedure.

After the bill has been passed by both the chambers it goes to the Governor-General for his assent. Only after that assent is given does the bill finally become law.

The budget has to pass through the following stages :

The budget

(*a*) It must be presented to the legislature on such day as the Governor-General appoints. A copy of it, along with detailed estimates, must be

dispatched to each member at least seven days prior to the first of the days allotted for the general discussion of the budget.

No discussion of the budget can take place on the day on which it is presented.

(*b*) After the budget is presented, the house is at liberty to discuss the budget as a whole. The Governor-General allots a definite number of days for this purpose. This is the opportunity for members to criticize the general scheme and policy of the Government and the main principles of administration. No motion is allowed at this stage, and details are generally excluded from the discussion. The Finance Member has a general right to reply at the end.

(*c*) After general discussion, the voting of demands for grants is undertaken. Not more than fifteen days are allotted for this purpose and not more than two can be taken up by the discussion of any one demand.

On the last of the allotted days for the voting of grants the president must stop all discussion at 5 o'clock in the evening and forthwith put every outstanding demand to the vote of the house.

A separate demand for a grant is ordinarily made for each department of the Government.

The legislature can reduce or omit but not increase the amount demanded in a grant.

§4. CONFLICTS BETWEEN THE TWO CHAMBERS

Reasons for conflict

With the creation of two independent and co-ordinate bodies in the central legislature, the Government of India Act had to provide for the contingency of a conflict between the two houses on any matter of legislation where consent of both the houses is made obligatory by law. The contingency of a conflict is inherent not only in the duality but in the co-ordinate character of the central legislature. Both have equal status and equal powers and uncompromising differences between them have to be made up by providing for some method where this equality will disappear. Such conflicts have taken place in all bicameral systems, and solutions for the consequent deadlock have been also provided. The monarch's unrestricted right of creating as many peers as he likes has proved the safety-valve of the British constitution on more occasions than one. The Parliament Act of 1911 has made resort to this power unnecessary. Special clauses have been included in the Government of India Act of 1919 to end the

conflicts which may arise between the two chambers of the Indian legislature.

After a bill is passed by either of the chambers, it is sent to the other chamber for its assent without which the bill cannot become an Act. Now the other chamber might accept the bill without modification and there is no hitch. If it introduces any amendment, then the bill is sent back to the originating chamber with the amendment. If the amendment is acceptable, matters pass off smoothly. The conflict arises on occasions when a bill passed by one chamber is totally rejected by the other or is so altered by it as to prove unacceptable to the first chamber. Various methods are provided to avert the conflict or to end it when it comes. For example :

Remedies to end them

(*a*) When a bill is introduced in either chamber and before it is referred to a select committee of the house in the second reading, the originating chamber may request, by a resolution, the other chamber to nominate some of its members on the select committee. Thus, while the bill is on the anvil and is passing through a searching examination at the hands of the committee, members of the other chamber are invited to take part in the discussion and give an indication of their views so as to enable the bill to be modified in the light of their opinion. In this way future opposition may be anticipated and a probable conflict averted if the motion to appoint a joint committee is accepted by both houses.

Joint select committee

On such a joint select committee an equal number of members from both the houses will sit; its chairman will be elected by itself and will have only one vote, and in case the votes are equal, the question will be decided in the negative. The time and place of the meeting will be fixed by the president of the Council of State.

Joint conference

(*b*) When there is a difference of opinion between the chambers, they may agree to a joint conference where each chamber will be represented by an equal number of members. The procedure of the conference will be determined by itself. The time and place of its meeting will be fixed by the president of the Council of State. An amicable settlement may be arrived at as a result of the discussions in the conference and the deadlock may be ended.

(*c*) As a last resort, if the chambers are in a state of pronounced mutual disagreement, when a bill as passed by

the one is not approved of by the other and when the latter's amendments and alterations are not acceptable to the originating chamber, this last body may report the fact of the disagreement to the Governor-General or allow the bill to lapse. In case intimation of the difference is given to the Governor-General, he may convene a joint sitting of both the chambers by notification in the *Gazette*. The president of the Council of State presides, and its procedure will apply to such a sitting. The members present at a joint sitting 'may deliberate and shall vote together upon the bill as last proposed by the originating chamber and on the amendments in dispute'. The majority of the votes of the total number of members present shall prevail and the bill as passed by the majority, with any amendments that may have been accepted, will be taken as if it had been duly passed by both the chambers. It is plain that in a joint sitting the Assembly will naturally be at an advantage on account of its larger numbers.

Joint sitting

(*d*) A slightly complicated situation arises in connexion with a conflict when, in addition to the will of the chambers, a third force, the will of the Governor-General, comes into operation. In the cases above discussed the Governor-General was taken to be an impartial, disinterested spectator. But occasions may arise—they have arisen in recent times—when in the conflict of opinion between the two chambers the Governor-General may take a keen interest and may cast in the weight of his authority on one side. He can then end the conflict by the use of the extraordinary constitutional weapons that are provided for him. The expedient of a joint sitting proves useless for his purpose if his difference is with the Assembly, as that body would command in the joint sitting a majority of votes. When, therefore, the disagreement between the chambers is complicated by the disagreement of the Governor-General with either of them, it has happened in practice that the process of certification has been utilized for the removal of such a deadlock.

Certification

A concrete case will illustrate the point. The Princes' Protection Bill and the clause doubling the salt-tax in the Finance Bill of 1924 were rejected by the Legislative Assembly. The Governor-General was interested in the passing of these measures. They were therefore sent up to the Council of State with the Governor-General's recommendation about the form in which they should be passed and were passed by that body. Thus there arose occasions of conflict

between the Assembly and the Council, with the Governor-General interested in getting particular measures passed in spite of the opposition of the Assembly. When the bills as passed by the Council of State were not accepted by the Assembly, the Governor-General exercised his certifying power, gave his assent to them and the measures were taken to be legally passed. Apart from the usual constitutional provision of a joint select committee or a joint conference or a joint sitting, the Governor-General's extraordinary executive authority has thus indirectly tended to serve the same purpose on certain occasions, when the Governor-General himself has been a party in the conflict and has espoused a particular cause.

CHAPTER XI

THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

§1. NO PRINCIPLE OF RESPONSIBILITY. §2. INDIRECT INFLUENCE OF THE LEGISLATURE

§1. NO PRINCIPLE OF RESPONSIBILITY

The executive ought to be subordinate

It has been explained already how a proper understanding of the relation between the executive and legislative parts of a country's administration is indispensable for estimating the reality of its democratic character. In a country with parliamentary institutions like England, the subordination of the executive to the legislature is complete. And as the final goal of British policy in India has been announced to be the progressive realization of responsible government and the development of parliamentary institutions, when the goal is achieved in practice, the subordination of the Indian executive to the Indian legislature will also be complete. An attempt has to be made to view in a proper perspective the relations between the two parts as they exist in the present avowedly transitional period.

No consideration could have of course been given to this problem before the completion of the Indian conquest and the settling down into peaceful routine of its administration. In the beginning of British rule, legislatures as separate bodies did not exist at all. And when they were introduced and as they were progressively developed during the latter portion of the nineteenth century, gradual additions were made to their powers. Still, the thoroughly irresponsible character of the executive administration was fully maintained.

The position before the Reforms

Even at the time of the Councils Act of 1909 the intention of even indirectly initiating something akin to parliamentary government was expressly disowned. There was no question of the executive being controlled by the legislature. The latter at the most could indulge in declamatory rhetoric which very often 'fell on deaf ears and beat its head against stone walls', as Sir Surendranath Banerjea might have said. The

enlargement of the Councils was simply due to a desire for the greater association of Indians in the administration. There was no impulse of any progressive political principle behind it. The bureaucracy was responsible only to itself and in the last resort to the distant Secretary of State and the languid British Parliament.

The position after the Reforms

The Act of 1919 introduced many important changes in other directions, but so far as the strictly legal position is concerned, it left entirely unaffected and unchanged the old relations between the executive and legislative parts of the Government. In strict theory, the Governor-General in Council continues even after the Montford Reforms to be as autocratic as he was before. Neither he nor his colleagues are called upon to resign even after a regular vote of censure is passed upon them by the legislature. Their salaries and rules of service are beyond the reach of the people's representatives. They need not accept any recommendation made to them by the legislature. Their responsibility is only to the British Parliament, and they hold office during the pleasure of the Sovereign. The extraordinary legislative veto that is now given to the Governor-General, otherwise known as the power of certification, is intended to serve as a corrective to any persistent obstruction on the part of the legislature. In short, the citadel of bureaucratic authority, so far as the Central Government in India is concerned, continues to be as strongly fortified as before according to the strict letter of the constitution.

§2. INDIRECT INFLUENCE OF THE LEGISLATURE

The new status and powers of the legislature

This is, however, a purely theoretical position. Matters are likely to differ somewhat in practice, particularly since the Reforms of 1919. With legislatures deliberately enlarged and democratized, with an elected non-official majority purposely created in them, with larger financial and deliberative powers advisedly conceded to them, and with the Viceroy's power of certification avowedly declared to be extraordinary, the indirect but none the less real influence of popular opinion as expressed in the legislature may not be entirely insignificant. The legislature cannot dismiss executive members but can certainly dismiss requests made by them for various grants necessary to keep some of the wheels of the machinery going. The refusal of such requests and the rejection or reduction of any of the demanded grants may indeed provoke a

viceregal resort to the extraordinary weapon of certification. That power may also be invoked for any other similarly rejected legislative measure. But unless certification ceases to be regarded and used as an extraordinary weapon and is invested with the routine familiarity that attaches to all normal instruments of the Government, administration by certification will be regarded as uncommon and abnormal.

Importance of public opinion

Public opinion as focussed through representative legislative chambers carries a peculiar weight with it. It is the most disciplined and chastened expression of a self-conscious public will. A mobilized and concentrated force of this type cannot be treated with the dilettante defiance of an unthinking autocrat. Such a defiance would prove suicidal. No normal Government can subsist on pure negation. No Government with a human, moral basis and composition can be bolstered up by props which have a tendency to press down those very moral and human elements which are the essence of its vitality. Legally, the Government of India are entirely independent of their legislature. In practice, on the other hand, they have to be thin-skinned enough to be automatically susceptible to popular opinion to a certain extent at least and generally to abide by its wish. Sir Malcolm Hailey, speaking in the first Legislative Assembly, described the Government of India as having become, after the Reforms, responsive if not responsible to popular opinion, and its actions as having become indicative if not reflective of the popular viewpoint.

Influence of publicity

An incessant use of the privilege of interpellation, of the power of moving resolutions and adjournments, of discussing the budget and voting a part of it, and of the power of sanctioning all legislative measures; in short, an incessant use of the searchlight of publicity and critical investigation, is believed to go a long way in the direction of strengthening the hands of the legislature and making it the centre of political influence. The executive has to gravitate towards this centre, perceptibly or imperceptibly. The elastic adjustment of its actions to accord with the surrounding political atmosphere may be dissembled by the garb of diplomacy; yet a consolidated, sober and responsible popular will is a force which can be discarded only on occasions of the utmost gravity when an administrative breakdown appears inevitable.

The degree of the indirect influence of the legislature upon the actions of the executive cannot be exactly estimated or evaluated. Even before the Act of 1919, the Montford

Report stated that such influence was very real. After the passage of that Act, the legislatures ceased to be mock bodies. They came to be more representative in character and acquired somewhat larger powers. It may be therefore concluded that the imperceptible influence of such bodies over the actions of the executive could not be negligible. After all, even a purely bureaucratic Government cannot afford to be thoroughly an unmoral, unhuman and lifeless machine. To a certain extent it must be susceptible to popular wishes.

Uncertain nature of indirect control

COMPOSITION OF THE LEGISLATIVE ASSEMBLY WHEN THE SIMON COMMISSION REPORTED[1]

Province	Nominated		Elected						
	Officials	Non-officials	Non-Mohammedan	Mohammedan	Sikh	European	Landholders	Indian commerce	Total
Government of India ...	14	5[2]	...	...	...	...	...	...	19
Madras	2	...	10	3	...	1	1	1	18
Bombay	2	1	7	4	...	2	1	2	19
Bengal	2	2	6	6	...	3	1	1	21
United Provinces ...	1	2	8	6	...	1	1	...	19
Punjab	1	2	3	6	2	...	1	...	15
Bihar and Orissa ...	1	1	8	3	...	...	1	...	14
C. P. and Berar ..	1	1[3]	3	1	...	...	1	...	7
Assam	1	...	2	1	...	1	...	...	5
Burma	1	...	3[4]	...	...	1	...	...	5
Delhi	...	...	1[4]	...	...	...	...	...	1
Ajmer-Merwara	...	...	1[4]	...	...	...	...	...	1
N.-W. F. Province ..	...	1	...	...	...	...	...	...	1
Total ..	26	15	52	30	2	9	7	4	145

The experience of the past sixteen years does not justify any strong hope about the practical success of such an indirect constitutional restraint. On more than one occasion, the

[1] Report, vol. I, p. 168.

[2] Nominated to represent the Associated Chambers of Commerce, Indian Christians, Labour, the Anglo-Indian community and the Depressed Classes. The distribution of nominated non-officials may be varied by the Governor-General at his discretion. The official membership of twenty-six is a fixed number though its distribution can be varied by the Governor-General.

[3] Nominated as the result of an election held in Berar which technically is not British territory.

[4] These five seats are filled by non-communal constituencies.

views of the Assembly have been disregarded. Proposals rejected by it have been restored. Grants refused by it have been reinstated. Resolutions passed by it have been neglected. The precarious nature of a power which is allowed only on sufferance and the existence of which is made dependent upon the frailty of a generous caprice has been amply demonstrated during the last few years. Indian public opinion demands the subordination of the executive to the legislature as a matter of right, not privilege. And even if the quality and reality of the legislature's indirect influence be asserted and proved to be great, the fact of its uncertainty and its allowance by mere courtesy detract to a great extent from its utility and value.

CHAPTER XII

THE FEDERATION OF INDIA: THE ACT OF 1935

ONE of the main concepts of the Act of 1935 is the establishment of an Indian Federation, incorporating British India and the Indian states. Several of its sections are devoted to prescribing the details of a federal structure. But this part of the Act has not been given effect to, simultaneously with the introduction of provincial autonomy, from 1 April 1937. However, it seems probable that the Indian constitution will become federal in the near future. An attempt is made in the following pages to give a brief account of the federal scheme, the causes which led to its adoption, and the consequences it is likely to produce on India's political life.

A. REASONS FOR A CHANGE IN INDIA'S POLITICAL STRUCTURE

§1. THE SIZE OF THE COUNTRY §2. THE INDIAN STATES §3. THE BRITISH INDIAN PROVINCES §4. THE ESSENTIAL UNITY OF INDIA §5. DIFFERENCE BETWEEN UNITARY AND FEDERAL STATES §6. OBSTACLES TO AN INDIAN FEDERATION §7. ARGUMENTS AGAINST AN INDIAN FEDERATION §8. ESTABLISHMENT OF THE INDIAN FEDERATION

§1. THE SIZE OF THE COUNTRY

European states are small and compact

Many countries of Europe are compact racial and linguistic units. Some are also very small in size. The administration of such states could be easily conducted from a single political centre and by a single organized bureaucracy. There would have to be a very considerable division of labour even in this arrangement. But it need not, and does not, involve a division of the governmental sphere into two distinct entities, each of which is separately assigned to a properly constituted authority. Administrative power will be only delegated to subordinate officers in charge of different departments and spread over the various parts of the country.

India stands in another category. It is a sub-continent, vast in dimensions and extremely varied in the composition of its population. Its huge area presents striking variations of cultural and economic development. It is inhabited by

numerous races, speaking different languages and professing different religions. The Indian people do not possess that inner affinity and coherence which are contributed by a common language, a common race, and a common religion. India is a land of hoary antiquity. History has continuously shaped and re-shaped itself in this ancient country and has left an impressive variety of its manifestations as a legacy to modern times. Today, the political map of India depicts two bold colours. The red represents the British Indian provinces and the yellow represents the Indian states.

India is not a homogeneous country

§2. THE INDIAN STATES

The ancestors of the present rulers of most of the Indian states were either independent kings or powerful and successful ministers, administrators and generals. In the political cyclone that gradually swept over the whole country during the eighteenth and nineteenth centuries, many such ambitious potentates naturally perished. Those who believed in the wisdom of bowing to the storm could survive the great upheaval, but with a lessened dignity and stature. They submitted to the conqueror, and were permitted to continue a diminutive existence on condition that their loyalty was unequivocally transferred to the new masters.

Their origin

The constitutional position of these states is peculiar. They have, of course, dwindled from the status of supreme sovereignty. There is no international recognition of their independence. Their defence and external relations are entirely in the hands of the suzerain. Yet, in purely internal matters, many of the states are in full enjoyment of all the authority that is associated with government. Even in this sphere, the Paramount Power can and does interfere to prevent a state from falling into administrative disorder or financial chaos. But such interference is naturally infrequent though it is never ineffective.

Their constitutional position

The control of the Crown over the Indian states is exercised by and through its representatives, the Viceroy and the Government of India. The latter has been entirely bureaucratic in form and concept till now. But the political advance of British India necessarily implies an important change. The purely bureaucratic system will be transformed into a government of the responsible type. Under such

Change in the character of the Government of India

conditions, other things remaining the same, the Crown's control over the Indian states would automatically pass into the hands of the Indian legislature.

Nothing untoward in the change

Nor is there anything particularly grotesque or offensive in such a transition. It does not embody any manifest impropriety or injustice. The East India Company was not a sovereign body. It signed treaties and engagements with Indian rulers, directly or by implication, on behalf of the Crown. The successors of both the contracting parties are entitled to claim all that had belonged to their predecessors. It is on the strength and in the exercise of that claim that the present rulers of Indian states are enjoying their patrimony of power, prestige and privilege.

Constitutional logic

The Government of India became successors and legal heirs to the East India Company. If they inherited all its liabilities they were also entitled to inherit all its assets. As the agents of the Crown, they have been exercising, when necessary, superior control over the Indian states. They ought to be entitled to do so in the future also, irrespective of any alteration in their own status. The Government of India continue to be the Government of India, whether they are composed of an alien bureaucracy or of a popular Indian democracy. A transition towards the latter status is in itself no justification for depriving that body of their inherited powers.

The states demand safeguards

Curiously enough, the rulers of the states have been looking at the problem in a different light. Their attitude betrays a profound distrust of a Government of India which may be formed and conducted on democratic principles. They seem to live in fear of their possible encroachments on their internal autonomy, and insist on being provided with ample safeguards to remove that danger. It is their view that the special prerogatives and privileges of their order must be held to be thoroughly sacrosanct and inviolable under all conditions. They must not be made even remotely liable to modification or subtraction by a popular Indian Government.

Significance of treaties and *sanads*

Such an opinion is based on the concept that the treaties, engagements and *sanads* existing between the Indian states and the Paramount Power have a wide significance. On the one hand, they enunciate the unconditional loyalty and subordination of the states to the British Crown. On the other hand, they

also convey the solemn assurance given by the British Crown that as long as the states continue to be loyal to the overlord, their rights and internal sovereignty will be respected and preserved intact. The political advance of India as a whole or of British India only must not diminish the strength of that vital guarantee.

The states are autocracies

The rulers of Indian states are therefore opposed to joining the Indian Federation unless they feel confident that their present independence will be maintained in all its fulness in the federal arrangement. They are averse to participating or acquiescing in India's political freedom except on those terms. It must be remembered that the Indian states are, in their internal affairs, undiluted autocracies. They are under the personal government of rulers whose authority is not hampered by any constitutional restraint. The subjects of states have no effective voice in their administration. It is not for them to vote taxes or to regulate expenditure. They have only to submit peacefully to their master's will.

An anomalous situation

This gives rise to a situation which is both anomalous and perplexing. The absolute rulers of states seem to prefer the superior control of a foreign bureaucracy to the domination of an Indian democracy. An assurance of their internal sovereignty by the British Crown and Parliament may produce a strange result. It may serve as a bulwark against any agitation for popular rights and liberties inside the states. It may help, ironically enough, in strengthening and perpetuating a form of government which is completely vaccinated against all progressive doctrines and which is being deliberately banished from British India!

§3. THE BRITISH INDIAN PROVINCES

Strong unitary government

The British Indian provinces represent that part of the Indian dominion which was not only conquered but annexed by the British power. It was placed under the direct rule of British officers. The Regulating Act, and more particularly the Acts of 1833 and 1858, established in British India a highly centralized unitary government. All civil and military authority was concentrated in its hands. Provinces had indeed to be formed and Governments established in them. But all of them derived their power from the Central Government and had to perform only such functions as were delegated to them by that authority.

Decentralization

Decentralization was begun by Lord Mayo in 1870, and it reached a fairly high stage in the separation of central and provincial subjects in the Montford Reforms. But even that scheme did not confer a new status upon the provinces. The Government of India were neither required nor permitted to abandon any of their final responsibilities. Transfer of power by and from them was merely devolution and delegation. It did not create co-ordinate entities but only subordinate agencies in the shape of provincial authorities.

§4. THE ESSENTIAL UNITY OF INDIA

Two distinct entities

Thus, there are two constituents which make up political India today. One is the group of autonomous Indian states, exercising extensive rights of internal sovereignty. They will have to sacrifice a portion of this sovereignty in order to help in instituting an all-India Federation which comprises them. Secondly, there are the efficiently organized British Indian provinces whose powers, theoretically speaking, are wholly derivative, and therefore liable to be modified, reduced or withdrawn by the Central Government. They have not to part with anything for the sake of the Federation because they possess nothing. On the other hand, by being incorporated into it, they will gain an authority and a status which they have never enjoyed.

Elements of unity

It is generally acknowledged that behind all the racial, linguistic, religious and political divergence that is presented by the Indian panorama, there is an inherent oneness, a fundamental unity. Geographically, India has been a distinctive, coherent whole, and that in itself is a great uniting factor. Politically, it has lived at intervals under the unifying influence of a single imperial authority. Above all, among very large portions of its population there has existed such a close affinity in intellectual and emotional outlook, in cultural development and spiritual allegiance, that they feel themselves to have been made of the same basic mould and as belonging to the same family.

The states are not fundamentally different

The Indian states cannot, therefore, be simply ignored in the evolution of responsible government for India. They cannot be permanently set aside. Though in a separate category of their own, they are part and parcel of the same motherland. Between their people and the people of British India there is

a perfect community of interests in all respects. Their difficulties and their problems, in times of both peace and war, are common. It is merely an accident, however important, that certain groups of Indians, occupying certain portions of Indian territory, live under a peculiar constitutional arrangement. The cleavage that is thus created between people and people and problem and problem is purely artificial and has no correspondence to the fundamental reality.

Opinion of the Princes

At the first Round Table Conference in London, several prominent Indian Princes proudly declared that they were Indians first and Princes afterwards. Nor are the subjects of Indian states in any sense different from their neighbours in British India. The Indian nation, in the larger sense, must be considered to be one and indivisible, whatever may be the nature and the degree of the autonomy conferred upon its units. British India and Indian India are two parts of the same organic whole.

Adoption of the federal ideal

Those who frame a constitution for India must take into consideration these peculiarities. The Indian state ought to be an expression of Indian life. There must be diversity in it and also a fundamental unity. The form of the Indian Government must embody and be consistent with that contradictory dualism. It must facilitate the growth of the individual as well as of the community. Indian and British statesmen have been discussing this problem for some time. The trend of opinion has been swerving steadily from the unitary towards the federal ideal. Even the Simon Commission visualized the formation of a federation for the whole of India in course of time.

It would be necessary at this point to give a brief idea of what is meant by unitary and federal states and to explain the difference between them.

§5. DIFFERENCE BETWEEN UNITARY AND FEDERAL STATES

A unitary state is centralized

In a unitary state, all authority is entrusted to one supreme organ. Control over all matters, civil, military, legislative, administrative, financial, is exclusively vested in it. Within its territorial jurisdiction it does not permit the formation of rivals who aspire to share its powers on a footing of equality. Smaller administrative divisions are allowed, but their powers are merely obtained from the Central Government. The latter does not abdicate any of its ultimate

authority but only keeps it in abeyance under certain conditions. Its will is not hampered by the creation of equals whose rights and privileges it cannot touch.

Privileges of federal units

On the other hand, in a federation are assembled a number of components who have certain inviolable rights and privileges of their own. They do not owe their existence or their status to the central authority; almost invariably, the reverse has been the case till now. Their powers are not possessed and exercised merely in virtue of delegation by a superior. The distribution of governmental work between them and the centre is effected by the constitution itself which is greater than either of them.

Composite sovereignty

A federation is an attempt to create a composite sovereignty. It recognizes and reserves a large measure of autonomy to the constituent units and yet provides for a vigorous supreme government. It endeavours to assimilate the forces that tend to diverge from the centre with those that tend to converge towards it. Unity without a deadening uniformity, diversity without disruption, free association without suppression, is the chief objective and the *raison d'être* of the federal union.

§6. OBSTACLES TO AN INDIAN FEDERATION

No compulsion for states

A great obstacle to the introduction of the federal system for the whole of India is the intriguing constitutional status of the Indian states. They cannot be compelled to part with even a fraction of their sovereignty by parliamentary enactment. That sacrifice could be only spontaneous and voluntary. Till a few years ago, it was not expected that many Indian Princes could be persuaded to merge some aspects of their individuality in the larger Indian whole. However, there was an agreeable surprise at the first Round Table Conference in London. The Princes, who were present in that conference, gave their enthusiastic support to the federal principle. They even declared their willingness to accept a constitutional scheme which is fundamentally based on that ideal.

A theoretical objection

A lesser and mainly theoretical objection was envisaged by constitutional purists. Writers on political science have described one characteristic feature of a federation. It is formed, they say, as the result of a deliberate combination of states which are sovereign. These states must choose to sacrifice their inde-

pendence in the cause of a new corporate existence. It therefore seems to follow that where there are no independent sovereign states pre-existing, a federation cannot be brought into being.

Mr Montagu's opinion

Even Mr Montagu expressed the view that the truly federal element cannot enter into Indian polity. 'There is no element of pact. The government of the country is one: the Local Governments are literally the agents of the Government of India. The last chance of making a federation of British India was in 1774 when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own and therefore nothing to surrender in the foedus.'

Political theory cannot be too rigid

However, it is obvious that political theory, like economic theory, must take cognizance of the facts of life and serve them usefully. It must interpret reality and fulfil its many-sided purpose. A social science is the summation of human experience. Its method is inductive. The formulas enunciated by such a science cannot be completely rigid. They must have the freshness and elasticity of a living organism. Its generalizations may sometimes prove to be inadequate because a particular type of experience has been exaggerated into a universal law. Emphasis has to be laid, not so much on the form, as on the spirit, of the regulating causes and conditions.

An odd proposition

It does seem a little odd that the chances of establishing a Federation of India should appear to have been irrevocably lost because, in the circumstances of 1774, the Parliament of Britain thought it wise to pass the Regulating Act for the better government of India! Constitution-building cannot evidently wait for such a scholastic inflexibility to relent and to leave the way open for natural growth and adjustment. Two factors are necessary to bring the federal doctrine into play and both of them are found in India. There can be therefore no theoretical difficulty in giving a federal shape to the Indian polity.

Two conditions necessary for a federation

The first of these factors is the existence of separate groups of human beings, differentiated from each other by language and race, but each distinct in itself. The second is a keen desire on the part of these groups to coalesce to a limited extent and also to retain their individuality in the amalgamated whole. The political independence of these

groups may be usual but is not indispensable. It is infinitely more important that they should be well-knit racial, linguistic or cultural units, and further, that they should sincerely aspire to combine into a common nationhood

§7. ARGUMENTS AGAINST AN INDIAN FEDERATION

There is an influential school of political thought in India which is keenly opposed to the incorporation of the federal principle in India's constitutional structure. It does not welcome the abolition of the unitary system for the following reasons :

It will discourage the sense of a common nationality

Firstly, it is contended that India has been torn by dissensions for centuries. The separatist and narrowly selfish tendency has dominated the whole course of Indian history and its results have been absolutely fatal. A century of strong, centralized government, with its uniformity of law, policy, and executive action, has fostered the concept of a common Indian nationhood. Its disappearance may encourage an ugly reversion to disintegrated national life and give a setback to the forces that make for the fusion of discordant elements.

Its formation will be impracticable

Secondly, it is pointed out by these critics, that a federation on really sound lines would be impossible in India in actual practice. The states will not agree to descend to a status of equality with the other constituents, namely, the British Indian provinces. They will necessarily demand certain special assurances and safeguards. The concession of such extraordinary privileges will inevitably negative the federal doctrine. On the other hand, a refusal will scare away the Princes from the proposed federal union.

There is very great force in these arguments. The evils they envisage are quite real. However, the balance of consideration seems, on the whole, to lie in favour of federation. The point cannot be elaborately discussed in these pages.

§8. ESTABLISHMENT OF THE INDIAN FEDERATION

The Act of 1935 has taken the bold step of altering the very basis and form of the Indian constitution. The unitary Indian state will be changed hereafter into the Federation of India. The latter will comprise all the British provinces and such of the Indian states as will agree to join it.

A legal fiction

An ingenious legal fiction has been adopted to overcome the initial constitutional difficulty that the provinces have no powers of their own to part with. All powers hitherto enjoyed by the Secretary of State, the Government of India and the provinces will be supposed to be fully withdrawn and resumed by the Crown. These administrative agencies will be thus reduced to a position of equality with each other in negation. The Crown will then redistribute its powers directly between the Central or the Federal Government and the provinces. Both will derive their authority from the same source and will have therefore a co-ordinate status. The lines and details of such a redistribution are laid down in the Act. The accession of Indian states will be only by their voluntary action and not by compulsion. The Act has, however, prescribed the method of doing it.

B. The Federal Structure

§1. CONDITIONS FOR INAUGURATING THE FEDERATION §2. DISTRIBUTION OF SUBJECTS AND RESIDUARY POWERS §3. THE FEDERAL EXECUTIVE: INTRODUCTION OF DYARCHY §4. THE FEDERAL LEGISLATURE

§1. CONDITIONS FOR INAUGURATING THE FEDERATION

Two conditions to be fulfilled

Sections 5 and 6 of the Government of India Act prescribe the details of the federal scheme. The new constitution will not actually begin working till the following two conditions are satisfied : (1) states, the rulers of which are entitled to choose not less than 52 members of the Council of State, and (2) states, the aggregate population of which amounts to at least one half of the total population of all the states, have decided to accede to the Federation. A ruler who decides to enter the Federation has to execute an Instrument of Accession acceptable to His Majesty. It will specify the extent to which he agrees to participate in the Federation, and will be binding on him, his successors and heirs.

Proclamation by His Majesty

The process of securing the accession of at least 50 per cent of the total strength of the states will be neither quick nor simple. It may involve endless hair-splitting discussions and an insatiable demand on the part of the Princes for an ever-lengthening clarification of issues. They may insist on

securing a very large number of reservations. When at last, after long effort, the accession of the requisite number of states is signified, the All-India Federation may come to be established. It will be inaugurated by His Majesty by Proclamation, after an address in that behalf has been submitted to him by both Houses of Parliament.

Time-limit for princely entrants

After the expiration of twenty years from the establishment of the Federation, requests from Princes for admission will have to be endorsed by each chamber of the federal legislature. This time-limit will have a salutary effect. It will put a check on the frivolous vacillation of some unprogressive members of that order and to help to complete the federal picture at least within that period.

§2. DISTRIBUTION OF SUBJECTS AND RESIDUARY POWERS

Two spheres of government

A federal structure must necessarily provide for two distinct divisions of the governmental sphere. It has to take cognizance of the provinces or the federating units and the central organization under which they are united. The jurisdiction of the two authorities requires to be clearly defined. It is usually done by the following method. Certain specified subjects are deliberately assigned either to the provinces or to the centre. The rest are then handed over to the remaining authority. Only one list, enumerating particular items, is necessary under this arrangement. The other group of subjects is automatically prescribed in a general but negative manner. It consists of an undefined and unparticularized mass of all those items which are not included in the list that is specially prepared.

Three lists of subjects

A more elaborate course is followed in India. An exhaustive and specific list is drawn up for the Central Government and another is similarly drawn up for the provinces. A third large list is further prepared for the concurrent jurisdiction of those two authorities. This latter is expected to be a useful device for securing uniformity in certain matters without introducing centralization. It would counteract the tendency towards a vexatious multiplicity of law and practice which hinders the growth and consciousness of a common nationality.

In spite of the punctilious care with which the lists may have been compiled by men of experience, it is possible that

certain items have escaped their attention. Entirely new circumstances and responsibilities may also arise subsequent to the preparation of the lists, and they will have to be successfully faced. A federal constitution must therefore provide for an allocation of residuary powers either to the provinces or to the centre.

Residuary powers

The whole trend of modern life is towards integration. Scientific inventions are reducing time and distance and bringing all humanity into one orbit. The federal sphere has been constantly widening in those countries which have that form of government. Writers on political science have even stated that the federal stage will inevitably lead to the unitary stage. The impulse for union cannot abruptly or arbitrarily stop. The opportunity for mutual contact and understanding that a federation provides is bound to create closer bonds and bring about a greater coherence among the constituent units.

Modern tendency

Unfortunately, the dispute assumed a communal aspect in India when the proposal for allocation of the residuary powers came up for discussion. The Hindus generally favoured strengthening the centre and leaving the residuary powers to it. On the other hand the Muslims preferred the opposite course as being more desirable in the interests of minorities. Parliament had to give its decision on these conflicting claims, and it came to the comfortable conclusion that residuary powers could most safely and conveniently rest neither with the centre nor with the provinces, but in effect with the Governor-General! Section 104 of the Act says that the Governor-General may empower either the federal or the provincial legislatures to enact a law with reference to any matter not enumerated in the central, provincial and concurrent lists.

Communal differences in India

§3. THE FEDERAL EXECUTIVE: INTRODUCTION OF DYARCHY

The Act of 1935 was not intended to satisfy India's vigorous demand for the immediate introduction of full-fledged responsible government both in the federal centre and in the provinces. Parliament is not prepared to accept the claim for such a wholesale and radical alteration of the Indian

Changes made by the Act of 1935

[1] For a detailed enumeration of subjects in the three lists see pp. 162-4.

constitution. The changes proposed in the Act are therefore inspired by a much smaller ideal and toned down by numerous limitations. The federal executive is to be made, not wholly but only partially, responsible to the federal legislature and that too with the imposition of various safeguards.

Dyarchy

To put it briefly, dyarchical government will be introduced in the federal sphere. The use of that expression has been scrupulously avoided, perhaps because of its unpopular association. But, excepting for this small deficiency in nomenclature, all the essential features of dyarchy are accurately reproduced in the working of the federal scheme.

Reserved part—Counsellors

Subjects in the federal list will be divided into two groups. One may be designated as Reserved. It will include Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas. It will be administered by the Governor-General with the advice of Counsellors (not Councillors, because there will be no Council here) who will not be responsible to the legislature. Their number will not exceed three. They will be appointed by the Governor-General, and their salaries and conditions of service will be prescribed by His Majesty in Council.

Transferred part—Ministry

The other group, which may be designated as Transferred, will include the remaining federal subjects. It will be administered by the Governor-General on the advice of a Council of Ministers who will be members of the federal legislature and responsible to it. They will be appointed and dismissed by the Governor-General who will be directed in the Instrument of Instructions to see that the collective responsibility of Ministers is observed in practice. The Ministers will be sworn in as a Council.

Financial Adviser

In addition to Counsellors and Ministers, the Governor-General is empowered by section 15 of the Act to appoint a Financial Adviser whose salary and conditions of service will be determined by him and who will hold office during his pleasure. The Financial Adviser will assist the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government. He must not be confounded with the Finance Minister who will be the head of the Finance Department and responsible for his actions to the federal legislature.

Common meetings of the two parts

The spheres of Counsellors and Ministers have been distinctly marked out and the administrative responsibilities of each have been defined. But there are certain glaring defects inherent in the system of dyarchy. They have been amply demonstrated in the working of the present Provincial Governments, and they are not likely to be less harmful because the system is shifted to the centre. Mutual consultation between Ministers and Counsellors is to be encouraged. They are asked to hold common meetings and frank and friendly deliberations. There will be opportunities for influencing each other's decisions.

Inherent defects

However, the equipoise set up by dyarchy is extremely delicate. The factor of personal temperament is very important in its operation. The compromise between incompatibles that it implies and embodies is so brittle and precarious, that quite unwittingly, by the unintended shock of a straightforward and simple action, the whole mechanism may suddenly go out of gear.

Vexatious reservations

Apart from these evils which are inseparable from the dyarchical structure, the degree of progress contemplated in the new constitution is miserably vitiated by the addition of reactionary encumbrances. The transfer of political power to the hands of Indians is likely to be more apparent than real. It is accompanied by reservations and safeguards which are all-pervasive in their conception and overwhelming in their operation. A most strenuous effort seems to have been made to discover every possibility of what, in the Englishman's view, may be an abuse of power by Indians. The vigorous exposition of this point by the Joint Parliamentary Committee leaves no doubt about the Englishman's hopes and fears in this respect. The reader is inevitably led to feel that Parliament is eager to perform an impossible feat. It seems to be keenly desirous of at once parting with a little power and also retaining the same in its own possession.

Special responsibilities

There is one dominating shadow which strides across the whole framework of the new constitution. It is thrown by what are described as the special responsibilities of the Governor-General and the Governor. This is a new creation, and it will have great significance in the actual working of the Act. It must be clearly understood that the formulation and definition of

special responsibilities is not merely equivalent to reserving a certain number of departments for the Governor-General's or Governor's exclusive jurisdiction, as is done under dyarchy. The division introduced by them is not departmental and physical. It may be rather described as psychological. Special responsibilities lead to and have to be fulfilled by the functions of interpretation, judgement and opinion. They are intended to cover the whole domain of administration, whether in autonomous provinces or in the dyarchical centre. There is no subject which is beyond their reach, no administrative action which is immune from their control.

Their enumeration

The following special responsibilities have been enumerated in section 12 of the Constitution Act for the Governor-General; section 52 enumerates them for the Governor.

(*a*) Prevention of grave menace to the peace or tranquillity of India; (*b*), (*c*) and (*d*) safeguarding the financial stability and credit of the Federal Government, the legitimate interests of minorities and the rights of the Services; (*e*) and (*f*) preventing discrimination against Great Britain in any respect—sections 111 to 121 of the Act have been specially devoted to an exhaustive elaboration of the kinds of possible discrimination; (*g*) protection of the rights of states; (*h*) securing due discharge of his functions which have to be exercised in his discretion or in his individual judgement.

Their scope and result

It will thus be seen that every conceivable aspect of administration—peace and order, finance, the Services, fiscal freedom, minorities, discrimination against Britain—has been included in the enumeration. It represents an enormous concentration and combination of overriding powers, both tangible and intangible, defined and undefined. Their frequent or infrequent exercise would appreciably affect the assessment of the value of the new constitution.

Governor-General's Acts

Certain extraordinary legislative powers are possessed by the Governor-General under the existing law, and they have been continued in the new Act. The power of issuing ordinances comes in this category. Further, the present method of certification is invested with greater constitutional dignity and its autocratic character more frankly avowed. It has been given a more decorous name, and its scope has been widened. Section 44 of the Act empowers the Governor-General to enact what

are to be known as Governor-General's Acts to enable him to discharge all his functions satisfactorily. He may, by message, explain to both the chambers of the legislature the circumstances which in his opinion render legislation essential and then either pass the Act forthwith or within a month of the sending of the message and after hearing the views of the legislature.

§4. THE FEDERAL LEGISLATURE

(*a*) *The Bicameral System*

It is a matter of controversy whether two legislative chambers are necessary in unitary states though they invariably exist in practically all of them. Since the Act of 1919 India has been living under the bicameral system.

The purpose of two chambers

The method of two chambers is generally believed to be indispensable in the working of a federation. It is a very convenient mechanism for symbolizing the essential equality of the federating units and also their inevitable inequality in population and size. The upper house in a federation represents the constituent states as states and as far as possible its seats are equally or approximately equally distributed among all of them. Here the smaller states are in a privileged position; they are guaranteed against tyrannical molestation and persecution by the bigger ones. On the other hand, the lower house represents the total population of the federation and its seats are distributed among the states in proportion to their numbers. Here the bigger states are at an advantage; they are prevented from being made a prey to the irresponsible caprice, jealousy and pettiness of the smaller ones. No federal law can be finally passed unless it is assented to by both the houses.

(*b*) *The Chambers*

Their constitution

Chapter III of Part II of the Government of India Act and its first schedule prescribe the constitution, powers and procedure of the federal legislature in India. The upper chamber will be known as before as the Council of State; the lower chamber will be known as the House of Assembly. The following table shows their composition.

COMPOSITION OF THE FEDERAL LEGISLATURE

Name	British Indian Representatives			Representatives of Indian States Nominated by their Rulers	Total
	Elected	Chosen by the Governor-General	Total	Not more than	Not more than
Council of State ...	150	6	156	104	260
House of Assembly ...	250	...	250	125.	375

Direct and indirect elections

Election to a legislature can be either direct or indirect. In the former case, territorial and other constituencies are formed specifically for the purpose of sending representatives to a legislative chamber and persons chosen by them are permitted straightway to take their seats in it. In indirect elections there is at least one more intermediary added. Representatives who sit in the legislature under this system are already elected members of some other body like a municipality, a local board, a local legislature or a specially constituted electoral college. There is first of all an election of the electors and then election to the legislature.

Advantages of direct election

The method of direct election has been naturally commended by political writers. It establishes immediate contact between the legislator and the citizen and brings home to the former his responsibility as an elected representative. If the will of the demos is to be effectively expressed and enforced there should be no complication or obstacle created by the presence of legalized middlemen. Indirect election may make the electoral machinery extremely clumsy and obscure to the masses and cause on the whole more annoyance than convenience. Worse still, it offers very great scope for political corruption, dishonesty and bribery.

Adoption of the indirect method

The indirect system had existed in India even after the Morley-Minto Reforms, but it was scrapped by the Joint Parliamentary Committee which reported on the Bill of 1919. For fifteen years since that time, elections to all legislatures in India, both central and provincial, have been direct. The

White Paper of 1933 had recommended the continuance of the same system. However, the Joint Parliamentary Committee which reported on it a year later took the opposite view and recommended that for both the chambers of the federal legislature the method of election should be indirect.

The Indian public bitterly protested against this retrograde move to the Morley-Minto days, and Parliament was at last persuaded to make an unimportant concession. The Act lays down that elections to the upper chamber, i.e. the Council of State should be direct; those to the lower chamber, i.e. the House of Assembly should be indirect.

Reasons for the adoption

The chief reason assigned for this reactionary departure from the White Paper proposal was that in the circumstances of an extensive and populous country like India, direct election was bound to lead to one of two evils. Either the constituencies would have to be excessively large or the number of members of the legislature would have to be abnormally big and unwieldy. The committee felt that neither of the alternatives could be accepted.

They are not convincing

However, it could be rightly contended that the maximum numerical strength of the legislature as prescribed in the Act could bear some increase without creating undue confusion or inconvenience. The territorial areas of the U.S.A., Canada and Australia are much bigger than the area of India; and at least in the U.S.A. the number of voters is not smaller than the total population proposed to be enfranchised in this country. Yet in none of those federations has it been found necessary to adopt the indirect, in preference to the direct, system of election. The latter may add to the difficulty of constitutional working; but the former produces the more dangerous result of diluting democracy itself.

Elections to the Council of State

The seats in the Council of State assigned to a province will be distributed among territorial constituencies which will be general and communal, the latter for Mussulmans and Sikhs. For election to seats reserved for women, all members of the provincial legislature, men and women, will be electors. As the number of Anglo-Indians and Europeans and Indian Christians in an individual province will be too small, special electoral colleges will be formed for the whole of British India for the election of their representatives to

the Council of State. The colleges will be composed of such Anglo-Indians, Europeans and Indian Christians respectively as are members of the Legislative Council of a province or of its Legislative Assembly. For seats allotted to the scheduled castes, persons of those castes who are members of the provincial legislature will be electors.

A high property qualification will be required for the right to vote at elections to the Council of State. It has yet to be determined. But it will confer the vote on only a small minority of aristocrats and industrial and commercial magnates.

Elections to the Assembly

Members of the House of Assembly assigned to a province will not be elected directly by constituencies, territorial and communal, specially formed for that purpose in the provincial area. The Legislative Assembly of the province will be the body of electors. Its Muslim and Sikh members will elect the Muslim and Sikh representatives; those holding general seats in it will vote in the election to the general seats of the Federal Assembly. Women members will be elected by an electoral college of all women who are members of the Legislative Assembly of any province. Anglo-Indian, European and Indian Christian seats will be filled by persons who are elected by electoral colleges consisting of members of those communities who are in the provincial Legislative Assemblies.

The federal legislature will have elected presidents, the Assembly president being known as the Speaker.

Tenure

The Federal Assembly will have a tenure of five years, but may be dissolved earlier. The Council of State will be a permanent body not subject to dissolution. One-third of the total number of its members will retire every three years, and the term of an individual member will be nine years. The details of the initial retirements have been given in the schedule.

Powers

The two chambers will have co-ordinate powers almost in all respects. The voting of grants of expenditure in the votable portion of the budget will not be an exclusive privilege of the lower house as at present. It has been extended to the Council of State. Joint sittings of the chambers will be held whenever there is a difference of opinion between them on a legislative or financial issue.

The following tables give the allocation of seats in the Council of State and the House of Assembly.

FEDERAL ASSEMBLY: REPRESENTATIVES OF BRITISH INDIA

Province	Total seats	Total of general seats	General seats reserved for scheduled castes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for commerce and industry	Seats for landholders	Seats for labour	Women's seats
Madras	37	19	4	...	8	1	1	2	2	1	1	2
Bombay	30	13	2	...	6	1	1	1	3	1	2	2
Bengal	37	10	3	...	17	1	1	1	3	1	2	1
United Provinces	37	19	3	...	12	1	1	1	...	1	1	1
Punjab	30	6	1	6	14	...	1	1	...	1	...	1
Bihar	30	16	2	...	9	...	1	1	...	1	1	1
Central Provinces and Berar ...	15	9	2	...	3	...	...	...	...	1	1	1
Assam	10	4	1	...	3	...	1	1	...	...	1	...
North-West Frontier Province	5	1	...	...	4	...	...	...	...	...	...	...
Orissa	5	4	1	...	1	...	...	...	...	...	...	...
Sind	5	1	...	...	3	...	1	...	...	...	...	...
British Baluchistan ...	1	...	...	...	1	...	...	...	...	...	...	...
Delhi	2	1	...	...	1	...	...	...	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...	...	...	...	...	...	...
Coorg	1	1	...	...	...	...	...	...	...	...	...	...
Non-provincial seats ...	4	...	...	...	...	...	...	...	3	...	1	...
Total ...	250	105	19	6	82	4	8	8	11	7	10	9

COUNCIL OF STATE: REPRESENTATIVES OF BRITISH INDIA

Province or community	Total seats	General seats	Seats for scheduled castes	Sikh seats	Mohammedan seats	Women's seats
Madras	20	14	1	...	4	1
Bombay	16	10	1	...	4	1
Bengal	20	8	1	...	10	1
United Provinces	20	11	1	...	7	1
Punjab	16	3	...	4	8	1
Bihar	16	10	1	...	4	1
Central Provinces and Berar ...	8	6	1	...	1	...
Assam	5	3	...	...	2	...
North-West Frontier Province..	5	1	...	...	4	...
Orissa	5	4	...	...	1	...
Sind	5	2	...	...	3	...
British Baluchistan ...	1	...	..	...	1	...
Delhi	1	1	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...
Coorg	1	1	...	...	...	...
Anglo-Indians	1	...	...	...	...	...
Europeans	7	...	...	...	...	...
Indian Christians	2	...	...	...	...	...
Total ...	150	75	6	4	49	6

(c) *Effect of the Changes*

It is necessary to explain broadly the probable effects of the changes that have been made in the constitution and powers of the central legislature.

Disappearance of the nominated *bloc*

The present nominated and official *bloc* will vanish almost completely, except for six seats in the Council of State. This is a good riddance of that bureaucratic regimentation and control of voting which gravely offends the very fundamentals of democratic polity. It may be argued that the rigidity of party discipline and the loss of individuality that it involves are equally serious defects of democracy. But it cannot be forgotten that those installed as party dictators occupy that position by the choice of their followers and are liable to deposition and dismissal by them. This is unthinkable under a bureaucratic code of discipline and conduct.

However, much of the good that will result from the withdrawal of the nominated and official *bloc* may be undone by the inevitable introduction of a new element. The

delegates from Indian states will form a substantial portion of both houses. The law does not prescribe, though it does not prohibit, the election of any of them by the subjects of states. They will be nominated by their rulers. It is not inconceivable that some of the most enlightened Princes will cause constituencies to be formed in their states and will nominate to the federal legislature only such persons as are elected by them. However, a self-imposed constitutional restraint of this kind will be the exception and not the rule. That it will be observed universally is an extravagant and unwarranted hope.

The states representatives

Thus, the serried ranks of Indian state dignitaries who will be exalted to the status of legislators in the Federation of India will have neither the strength nor the prestige of popular representatives. They will be mere nominees of absolute and unprogressive masters and instruments of their will. And in the delicate environment of paramountcy, the autocratic masters themselves may be revealed to have completely toned down into amiable and obliging gentlemen who are distinguished by a very quick and remarkable susceptibility to the influence of the Political Department of the Government of India!

Their undemocratic character

However, on the assumption that the future constitution of the country must be an All-India Federation including the Indian states, the incongruity caused by the presence of a large non-elected element in what is intended to be a representative chamber has to be faced; otherwise the rulers of states will be scared and their accession to the Federation will be rendered difficult. There will be some relief in the thought that such a stage, though inevitable, is likely to be temporary and transitional. It is more than probable that the closer impact between the dynamic ideals of British India and the static outlook and life of the states will accelerate political consciousness in the subjects of the latter and ripen in their rulers the healthy spirit of progressive constitutionalism.

An inevitable phase

The Council of State will be a unique assemblage of vested interests, reactionary oligarchs and conservative politicians. The franchise for its election will be exceptionally high; 40 per cent of its membership will be constituted by state nominees. Besides, it will be a permanent body and will not therefore be subject to that downright and wholesome cleansing which is periodically brought about by a dissolution and general election

Council of State will be thoroughly reactionary

which sweeps out lingering anachronisms. The abnormally long term of nine years of its individual members is not only undemocratic but demoralizing. It will breed irresponsibility and defiance in the legislators because there will be no fear of their having to face their masters, the electors, at short intervals.

Its financial powers

Further, upon such a narrow-based upper chamber the Act of 1935 has conferred a power which in a democratic polity is considered to be an exclusive privilege of the lower chamber. The voting of grants of expenditure was deliberately denied to the Council of State by the Act of 1919. But the federal namesake of that chamber will be possessed of that privilege. In short, everything seems to have conspired to make the upper chamber an invincible instrument for checking the advance of democracy.

The federal budget will be divided into votable and non-votable items as at present, and over 80 per cent of the total expenditure will be beyond the control of the legislature. There is therefore no change for the better at all. Absence of financial power imports an air of unreality into responsible government and tends to reduce it to a mockery.

PART IV

THE PROVINCIAL GOVERNMENTS

CHAPTER XIII

THE FORMATION OF PROVINCES AND THE GROWTH OF THEIR POWERS

A. The Formation of Provinces

A century of empire-building

A striking spectacle is presented in the history of the century that followed the battle of Plassey. There we see the evolution of an extensive empire from very unostentatious beginnings. Ruler after ruler and state after state capitulated before the might of the foreign invader. The last struggle ended with the frustration of the Indian Revolt in 1858. A moral, material and intellectual exhaustion seems to have completely prostrated the people of India during these sad days of their decadence and downfall.

Creation of political divisions

That a continent like India could not be treated as one single unit for the purposes of administration was quite obvious. It had to be split up into a number of provinces for facilitating division of labour and avoiding confusion. But the conquest of India was spread over the long period of a century. Officials who were called upon to form political sub-divisions of the country during the process of conquest lacked the perspective of the whole picture. They were faced with problems of immediate urgency and solved them by the standards of expediency.

No scientific principle adopted

There are various principles on which governmental authority can be distributed on a territorial basis in a vast country. Generally speaking, given a fairly numerous population, a common language with its common culture and a common territory are regarded as proper lines of demarcation. But no such scientific principles were adopted in the formation of Indian provinces. The basis of their division was neither ethnological nor linguistic nor cultural. The one and only consideration which brought them into existence was administrative convenience as visualized by officers who looked to the immediate future.

Hence, some of the Indian provinces have become very heterogeneous in their composition and structure. They are conspicuous for a great variety of languages and society. The

Heterogeneous formations

Bombay Presidency, for instance, consists of four or five distinct cultural groups, Sind (which is now separated), Kathiawar, Gujarat, Maharashtra and the Karnatak. Similarly, the Madras Presidency comprises people speaking Kanarese, Telugu, Tamil and Malayalam. The creation of such patchworks is injurious in two ways. It breaks up units that are homogeneous—as, for example, the Karnatak which is divided between Bombay, Madras, the Nizam's Dominions and the Mysore state—and brings together elements that have no deep inward coherence.

Demand for an alteration of provincial boundaries

The spasmodic and irrational method of the formation of provinces has led to an interesting sequel. There has now arisen in many parts of the country a considerable agitation for a rearrangement of provincial boundaries on more scientific and equitable lines. The growth of education has produced a self-consciousness in this, as in all other, spheres of public life. People who are closely united by ties of common race, common language and common culture, find themselves broken up into ineffective political fragments. They strongly feel that their material and intellectual progress is unnecessarily hampered as the result of such a wasteful dissipation of their collective strength.

Sind and Orissa separated

Several homogeneous groups have therefore vigorously protested against their political dismemberment by the Government of India and have demanded that they should be restored to their natural unity. Unfortunately, communal ambitions and wranglings were greatly in evidence even in this question, when the separation of Sind was discussed. The Act of 1935 has recognized the claims of Sind and Orissa to provincial independence, and accordingly these two names have been added to the list of Governors' provinces. It would not be surprising if some more are added in the course of the next few years by the splitting up of glaringly heterogeneous areas.

New provinces may require subventions

A brief reference must be made here to the other side of this important subject. The creation of new provinces has been deprecated by some eminent critics on financial as well as national grounds. It is held to be a costly luxury. If the provincial area is small, it cannot be self-sufficient in the matter of its income and expenditure. Its administrative machinery may also prove to be too inadequate to respond to all the various needs of social progress according to modern standards.

AREA AND POPULATION OF THE PROVINCES

(As given in the Indian Delimitation Committee's Report, 1936)

Name of province	Area	Total population	General—including scheduled castes	Scheduled castes	Moham-medans	Anglo-Indians	Europeans	Indian Christians
India—excluding Burma and Aden	1,575,107	338,119,154	238,622,602	50,250,347	77,049,868	119,143	274,029	5,570,240
British India—excluding Burma and Aden ...	862,599	256,808,309	177,175,450	39,137,405	66,392,766	101,380	238,592	3,193,337
Madras	126,663	44,183,609	39,083,342	6,944,747	3,290,294	28,630	12,341	1,703,791
Bombay	77,221	18,192,475	15,602,932	1,673,896	1,602,385	14,176	18,028	267,460
Bengal	72,514	50,114,002	22,493,659	9,124,925	27,497,624	27,573	20,895	129,134
United Provinces ...	106,248	48 408,763	40,905,586	12,591,525	7,181,927	11,263	22,043	170,216
Punjab	91,919	23,551,210	6,328,415	1,440,750	13,302,991	2,995	19,106	392,144
Bihar	69,348	32,371,434	28,194,621	4,490,599	4,140,327	5,892	5,390	331,185
Central Provinces and Berar	99,920	15,507,723	14,815,054	2,927,343	682,854	4,740	5,075	35,531
Assam	27,572	8,214,076	4,858,779	572,490	2,753,563	558	2,961	117,200
North-West Frontier Province	13,518	2,425,003	142,977	.....	2,227,303	150	7,947	4,116
Orissa	32,681	8,174,251	8,043,018	1,006,983	131,233	635	856	36,573
Sind	46,378	3.887,070	1,015,225	99,551	2,830,800	1,930	6,576	6,627

Such lean provinces will then become a burden upon the Federation which will have to help them with subventions in order that their budgets should be balanced. It has been decided, for instance, that Sind and Orissa should be given annually about a crore and half a crore of rupees respectively by the Central Government to enable them to make up their deficits.

Cultivation of a wider national outlook

It is also pointed out that the present incongruous formation of provinces has its own advantages in a larger national sense. It accidentally brings together under one administrative system several of the smaller nationalities of which India is made. They get an opportunity to work together and to understand each other. Such contact between diverse populations is to be greatly desired. It would help in rounding off the rigid angularities of a narrow provincialism and inculcate a much broader national vision which is so urgently required in India. A cosmopolitan outlook and a living spirit of assimilation are at least as essential in the modern world as the strength which comes merely from an innate coherence. A reshuffling of the provincial areas may be undertaken in a spirit of reform and justice. Even then, the provision of some common meeting ground, some common organization, for the different neighbouring units to remain in touch with each other, should not be completely ignored.

The Governors

The earliest trading settlements of the East India Company were established in the three coastal towns of Madras, Bombay and Calcutta. When, later on, the Company drifted into politics and war, these 'factories' became seats of Governors and their Councils. The Regulating Act created the office of Governor-General and a unity of government and policy was effectively introduced throughout the Company's dominions in India. The Governors of Madras and Bombay could no longer have any pretensions to equality with the Governor-General nor could they assume any air of independence.

Lt.-Governors and Chief Commissioners

With the expansion of the Company's power, it became necessary to make provision for the formation of new provinces. This was done by several Acts passed after 1833. In fact, three different types of provinces are found in the Indian administrative picture from the middle of the nineteenth century—the 'Governors', the Lt.-Governors' and the Chief Commissioners'. They represented a descending grade of constitutional status. The Montford Reforms did away with

this distinction in the official designations of the heads of provinces, though other important differences in the matter of their appointment, salary, etc. remained as before. All Lt.-Governors and almost all the Chief Commissioners were elevated to the dignity of provincial Governors.

The Governors' provinces

Section 46 of the Act of 1935 prescribes that the following shall be the Governors' provinces—Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. Their total number is eleven. Sind and Orissa have been newly created by section 289 of the Act. Burma has been separated from, and has therefore ceased to be a part of, India.

Creation of new provinces

The creation of new provinces and alteration of the boundaries of existing provinces are matters of great constitutional importance. By section 290 of the Act, these powers are vested in His Majesty and he can exercise them by issuing Orders in Council. But before any such Order is issued, the opinion of the Government and the legislature of the province concerned as also the opinion of the Federal Government and the federal legislature have to be ascertained.

B. The Status and Powers of the Provinces

The Government of India was unitary

Since the Regulating Act of 1774, the Government of India has been entirely a unitary Government. Technically speaking, it will continue to be so till the actual establishment of the Indian Federation in the near future. The provinces were considered till now to be merely the creations of the Government of India. They did not enjoy any powers and privileges inherently in their own right. All their authority was derived entirely from the Central Government. The latter did, of course, transfer some of its administrative burden to provincial units. But thereby it did not—and could not—relinquish even a fraction of its own responsibilities in respect of what was thus transferred. Certain powers were assigned to the provinces only for the sake of practical convenience. The assignment could be varied or revoked at will by the supreme Government.

Necessity of devolution

In 1870, Lord Mayo introduced a scheme of decentralization. It was being increasingly realized by the Government of India that the administration of a vast country like India could not be completely concentrated in the hands of a single authority, even

when the constitution of the state was unitary. Details had to be separated from policies. Matters of local importance had to be separated from questions of national urgency. Governmental work had to be distributed among individuals and institutions on the principles of a rational division of labour. That alone could avoid inefficiency and confusion in operating the administrative machine. The process of devolution initiated by Lord Mayo went on progressing for over forty years after 1870. It was purely a matter of internal arrangement and did not require parliamentary legislation or sanction.

The position before the Montford Reforms

It would be interesting to pass in brief review the relations between the Central and Provincial Governments on the eve of the Montford Reforms. There were three groups of administrative departments. One consisted of subjects of all-India importance like defence, customs, railways, coinage, posts and telegraphs, etc. It was controlled exclusively by the Government of India. The second group contained what were known as Provincial Heads. They were assigned to the provinces for management under certain conditions. Items like jails, police, education and roads primarily came in this category. The last group represented what were known as the Divided Heads. It included subjects like land revenue, excise, income-tax, registration, irrigation, etc. Revenues from these sources as also administrative control over them were divided in a certain proportion between the Central and Provincial Governments.

Nature of the central control

Provinces were not allowed to impose taxation without the previous sanction of the Governor-General. Nor were they allowed to borrow money by pledging their own credit in an open money market. Bills to be introduced in the provincial Legislative Councils required the previous sanction of the Governor-General. They also required his subsequent assent after they were passed by those chambers. There were many codes, regulations and instructions promulgated by the Central Government for the whole of India and they had to be strictly obeyed and carried out by every province. All executive action taken or proposed to be taken by the latter was subject to the close supervision and control of the Government of India. The administrative freedom obtained by the provinces could not be claimed by them as their right. It was only a concession and a privilege, the exercise of which was severely restricted by the powers of scrutiny and direction of the Governor-General.

After the Montford Reforms

A new angle of vision was introduced by the Montford Reforms. The principle of responsibility was accepted for the first time as a vital feature of India's political advance. The provinces were selected to serve as a training-ground for the Indian people to learn the art of self-government of the parliamentary type. It logically followed that these territorial units should be completely freed from the bureaucratic control exercised from above by the Government of India. Central and provincial spheres were therefore demarcated from each other by the compilation of two separate lists of administrative subjects. One of these lists was assigned to the exclusive jurisdiction of the Central Government and the other was given to the provinces.

Greater freedom to the provinces

Broadly speaking, the authority of the provincial Governments in the provincial sphere was intended to be real and unfettered. Their budgets were separated from the central budgets. A greater power of taxation was conferred on them. They were allowed to float loans with the sanction of the Government of India. Previous sanction of the Governor-General for legislation in purely provincial subjects was made less obligatory than before. The Central Government's control over the transferred provincial departments was practically withdrawn. Even in the Reserved half, they agreed not to interfere whenever the provincial executive and legislature were in agreement.

Thus, steps were taken to emancipate the provinces from a number of restraints. The principle was accepted that a substantial measure of freedom and discretion must be granted to them in the interests of a proper and all-round development of the whole country.

CHAPTER XIV

DYARCHICAL GOVERNMENT, 1921-37

A. The Genesis of the Scheme

The final goal of British policy in India, as visualized by the British, was enunciated in the announcement of 20 August 1917. It was described as the progressive realization of responsible government and the gradual development of parliamentary institutions. The Act of 1919 was intended to be the first important step in implementing that promise. Parliament tried to find a way out of two impossible and unacceptable situations. On the one hand, it was pledged not to permit the Indian constitutional structure to remain entirely bureaucratic and uncontrolled by the Indian people as in pre-War days. On the other hand, it was determined not to allow the Indian polity to be suddenly transformed into a full-fledged democracy by one decisive stroke.

The goal of British policy in India

Any scheme of reform which is based on this hypothesis would be essentially a compromise between the bureaucratic and the democratic principles. It would not bring about a total disappearance of an irresponsible and irremovable executive from the Indian scene. The conduct of a large part of Indian administration would continue to be vested in officials who are directly answerable only to the Crown and Parliament of Britain. The transfer of political power to India would not be complete but partial and even fractional. It would be also subject to the superior control of the Governor-General. The dyarchical plan introduced by the Act of 1919 can be properly understood only when it is related to this fundamental assumption.

Gradual transfer of power

That plan proceeded chiefly along the following cardinal points. In the first place, even though the unitary form of the Indian state was maintained, the spheres of the Central and Provincial Governments were clearly demarcated and separated from each other. They were recognized as two distinct entities, each having its own specific responsibility. Secondly, control by the Central Government was considerably relaxed in the provinces, though it was not completely abandoned.

The dyarchical plan of 1919

The provincial authorities were given a good deal of freedom in the management of their own affairs. Thirdly, provinces which thus acquired a status of administrative independence were made the centre of a new political experiment. The first instalment of self-government which was promised by Parliament was initiated in the provincial domain.

Two requisites of responsible government

It is necessary to grasp the two principal elements which shape the mechanism of responsible government. Firstly, under this system, the executive is completely subordinate to the legislature. It is brought into office and maintained in authority only as long as it retains the confidence of the legislature. An adverse vote of that body results in the resignation of Ministers and in a change of Government. The second important requisite is that the legislature which thus controls the executive should be itself elected on the widest possible franchise. It must be thoroughly representative of popular opinion and must reflect the living currents of the larger social life. The popular will is broadly expressed in the legislature, and the machinery of government is conducted in the light of its mandate and direction.

Dyarchy, a transitional phase

The Act of 1919 contemplated a gradual evolution towards, and not an immediate establishment of, full provincial autonomy. It therefore devised a peculiar method of governance to suit the period of transition. That method is known as dyarchy. The term was quite new in political usage if not in coinage. The scheme was actually inaugurated in the beginning of 1921 and was working thereafter for over sixteen years till 1 April 1937. On that date it was superseded by the Government of India Act of 1935 which was put into operation nearly a couple of years after it was passed by Parliament.

B. The Provincial Executive

Reserved and Transferred subjects

The system of dyarchy as it operated in the Indian provinces was essentially based on one dominant principle. It deliberately created a division of the Government into two sections. One of them was wholly bureaucratic and the other was popular to a great extent. The former, which was known as reserved, was managed by an irremovable Executive Council. The latter, which was called transferred, was given over for management to responsible Ministers. They were elected members of the provincial Legislative Council and

answerable to it for their policies and actions. Both these sets of officials were required to work under the same head, namely, the Governor of the province. They were also associated with, and depended for legislation upon, the same legislature.

Separate spheres

An attempt was made to keep the jurisdiction of the two halves as distinct and independent as possible. Legally speaking, Executive Councillors could not interfere in transferred subjects and Ministers could not interfere in reserved subjects. They might of course hold friendly consultations with each other. Any dispute between them about the exercise of authority was left to the arbitration of the Governor whose decision was final.

Overlapping

However, it was discovered by experience that the two divisions created by the dyarchical principle could not be absolutely precise and mutually exclusive. They inevitably overlapped at several points. There could be no perfect differentiation between two parts of the same Government. It was found to be an inherent defect of the whole system that administrative work could not be successfully distributed into water-tight compartments like reserved and transferred. The very foundation of the structure seemed therefore to be a little shaky.

The Executive Council

Members of the Executive Council were technically appointed by His Majesty, but in practice their choice was made by the Governor. Their tenure of office was fixed at five years and they could not be removed from their posts by an adverse vote of the legislature. Their salary was not subject to the control of the latter. One half of the Executive Councillors were Indians and the other half were members of the Civil Service of long standing. They functioned collectively as a Council, but not as a Cabinet, on the portfolio system. The Governor was the president of the Council and had an additional vote in case of a tie. He distributed departments among its members and prescribed rules for its procedure. The decision of the majority was binding on all. However, the Governor was given the extraordinary power of overriding the Executive Council in exceptional circumstances.

The Ministers

The appointment of Ministers was made by the Governor. But his choice was restricted to persons who were elected members of the provincial Legislative Council. It was an indispensable qualification in a Minister that he should be an accredited representative of some constituency or other. Further, such persons alone could be selected to hold ministerial posts as

were able to command a majority of the Council's vote. The constitutional position in this respect was clear. A Minister could continue in office only as long as his actions and attitude harmonized with the views of the legislature. Where public opinion was effectively organized into well-disciplined parties, the Governor had to leave the formation of a Ministry to the party leaders themselves.

Effect of the nominated element

Even in such cases, however, he could exercise a considerable influence in determining the composition of the ministerial body. The Legislative Council contained a small but solid minority of nominated members, both official and non-official. Their votes were almost entirely at the command of the Government. There were also the representatives of the European chambers of commerce, the European community, the big landowners and other vested interests. It was the natural tendency of these members to assimilate themselves with the Government *bloc*.

Temptation to the Ministers

The voting strength of this combination was not negligible. Besides, it was excellently organized and unified by bureaucratic discipline. Ministers therefore felt irresistibly tempted to win over the favour of this weighty *bloc* rather than struggle for the precarious support of a heterogeneous mixture as represented by elected non-official members. Their sense of responsibility was palpably attenuated as a result of this undemocratic privilege.

No collective responsibility of Ministers

Ministers were not required to work on the principle of joint and collective responsibility. They did not come into office and go out of office together. Nor did they constitute an indivisible, homogeneous whole like the British Cabinet. Their policies were not adopted after common deliberation and agreement. They were not therefore fortified by the strength of a closely organized unit. The Governor dealt with a Minister as an individual head of a department. He did not recognize the existence of a group of Ministers having a joint responsibility for the management of the whole mass of transferred subjects. They had therefore merely an individual existence. In spite of their plural number, they did not make Ministries. In fact, Ministers lacked even that lesser degree of corporate character which was associated with the Executive Council.

There was one peculiar feature of the division of the Government introduced by the dyarchical scheme. Though

the provincial sphere was purposely split into two halves, the provincial finances were left entirely undivided. They were looked after by a Finance Member whose authority extended to the whole administration. The budget for the two halves was common and their purse was joint. There were no earmarked items of provincial revenue specifically assigned to either of them. All taxation was provincial and its proceeds were credited to the provincial exchequer. Out of that common reservoir, into which all moneys were pooled, different sums were provided for expenditure on the various activities of the provincial Government, whether in the reserved or in the transferred parts.

Joint purse

Executive Councillors and Ministers had therefore to meet every year for preparing the provincial budget. The shares of expenditure that may be allotted to each department had to be judiciously and equitably determined. All possibilities of income had to be carefully explored in the light of the total demand. The task was not particularly easy or simple. The outlook of an irresponsible bureaucracy was fundamentally incompatible with the needs and ambitions of popular Ministers. A spirit of give and take, of mutual accommodation, of sympathy and co-operation, was absolutely essential to the smooth functioning of such a delicate mechanism. If the differences became acute, the result was a deadlock. On such critical occasions, the Governor could allocate funds between the two halves in his own discretion and prevent the machine from coming to a standstill.

Joint meetings

Dyarchy was never intended to be an ideal in itself. It was not prescribed as the final form of the Indian Government. Mr Montagu had made it abundantly clear that the Reforms proposed by him were in the nature of a stepping-stone to a much nobler consummation, namely, a fully self-governing India. It was therefore recommended that those who were called upon to operate the dyarchical plan should interpret their opportunities and obligations in a generous spirit. Members and Ministers could take each other into confidence and work together in the closest intimacy and co-operation. There was no legal obstacle to their holding mutual consultations and discussions in all matters affecting their respective spheres. The Governor could take the initiative in establishing traditions of collective working. In practice, if not in law, the line of distinction between reserved and transferred subjects could be obliterated.

Mutual consultations

The Governor was all-powerful

However, such a grand idea proved to be too altruistic to be capable of realization. On the whole, the Governors were not prepared to accept all the implications of Mr Montagu's concept of dyarchy. They did not respond to all the suggestions that were made by him. In fact, experience showed that the Governor inevitably became the chief pivot and the centre of the provincial administration. He became the connecting and co-ordinating link between the two halves, and was the final judge for settling conflicts between them. Ministers complained of the undue interference of the Governor in the working of their departments. He was often inclined to override their decisions if he happened to differ from them. The interests of the Services were to be specially safeguarded by him. In short, all governmental power tended to be concentrated in his hands.

Dyarchy condemned by Indian opinion

Indians were thoroughly dissatisfied with the whole project of dyarchy. The parliamentary appearances that it suggested were tantalizing. But the hybrid structure, with all its imperfections and woeful inadequacies, could not but evoke very severe criticism from politically-minded Indians. Those who had a personal knowledge of its inner working exposed its ridiculous contradictions and defects. The most ideal manifestation of dyarchical government implied the complete self-effacement of an irresponsible bureaucracy. That voluntary sacrifice required, indeed, a superhuman capacity. The belief that it could be generally in evidence in the Indian provinces may have been a compliment to the optimism of those who held it. But as a guide to the understanding of realities, that belief had no significance.

C. The Provincial Legislature

Changes made in their constitution

The Act of 1919 introduced several important changes in the constitution of the provincial legislatures. In the first place, they ceased to be looked upon as mere enlargements of the Executive Councils. Their status as independent organs of government was distinctly recognized. Secondly, a large majority of elected non-official members was provided in their structure. The official and the nominated non-official elements were not entirely removed, but they were placed in a numerical minority. Thirdly, the franchise for election to the provincial Legislative Councils was considerably lowered. The right to vote was conferred

on comparatively poor people. It was the beginning of popular democracy.

Increase in their powers

The powers of these legislatures were also increased. In addition to law-making, they were given greater control over the administration by means of the rights of interpellation, adjournments, resolutions, etc. A part of the provincial budget was made subject to their vote. Lastly, they were privileged to exercise supreme authority over that portion of the provincial executive which was represented by the transferred half. Ministers were entirely the servants of the legislature. They had to conduct the affairs of state in accordance with the opinions of that body.

Information given in the following tables will be found interesting. They will facilitate a comparison with the changes introduced by the Act of 1935 which will be described in the following pages.

TOTAL STRENGTH OF GOVERNORS' LEGISLATIVE COUNCILS AS GIVEN BY THE SIMON COMMISSION[1]

Province	Statutory minimum	Elected	Nominated officials plus Executive Councillors	Nominated non-officials	Actual total
Madras	118	98	7 + 4	23	132
Bombay	111	86	15 + 4	9	114
Bengal	125	114	12 + 4	10	140
United Provinces ...	118	100	15 + 2	6	123
Punjab	83	71	13 + 2	8	94
Bihar and Orissa ...	98	76	13 + 2	12	103
Central Provinces ...	70	55	8 + 2	8	73
Assam	53	39	5 + 2	7	53
Burma	92	80	14 + 2	7	103

COMPOSITION OF THE BOMBAY LEGISLATIVE COUNCIL.

ELECTED MEMBERS

	Members
Mohammedan Rural	22
Mohammedan Urban	5
Non-Mohammedan Rural[2]	35
Non-Mohammedan Urban[2]	11
European	2
Landholders	3
Commerce and Industry	7
Bombay University	1
	86

[1] Report, vol. I, p. 134.

[2] Of the members of the non-Mohammedan constituencies seven must be Marathas.

NOMINATED MEMBERS

(i) Officials (including Executive Councillors)	20
(ii) Non-officials	
(a) Depressed Classes	2
(b) Anglo-Indian	1
(c) Indian Christian	1
(d) Labour	3
(e) Others (cotton trade)	1
Total ...	114

TABLE SHOWING, PROVINCE BY PROVINCE, THE PROPORTION OF ELECTORS TO POPULATION IN THE GENERAL CONSTITUENCIES[1]

Province	Population of the electoral areas in 1921	Electors male and female (women electors shown in brackets)	Proportion of electors to population	Proportion of male electors to adult male population	Proportion of female electors to adult female population
	Figures to the nearest thousand		per cent	per cent	per cent
Madras ...	4,23,19,000	13,65,000 (1,16,000)	3·2	11·6	1·0
Bombay ...	1,92,92,000	7,59,000 (39,000)	3·9	13·4	0·8
Bengal ...	4,62,41,000	11,73,000 (8,000)	2·5	9·7	0·3
United Provinces ...	4,53,76,000	15,89,000 (51,000)	3·5	12·4	0·4
Punjab ...	2,06,75,000	6,97,000 (21,000)	3·4	11 9	0·9
Bihar and Orissa ...	3,38,20,000	3,73,000 (nil)	1·1	4·6	...
Assam ...	67,35,000	2,50,000 (about 3,000)	3·7	14·2	0·2
Central Provinces and Berar ...	1,27,80,000	1,69,000 (nil)	1·3	5·2	...
Governors' provinces excluding Burma ...	22,72,38,000	63,75,000 (2,68,000 in six provinces)	2·8	10·4	0·6 for six provinces

[1] Simon Commission Report, vol. I, p. 191.

CHAPTER XV

THE PROVINCIAL GOVERNMENTS IN THE FEDERAL CONSTITUTION

§1. PREPARATION OF THREE LISTS §2. THE LAW-MAKING POWER OF A PROVINCE §3. THE EXECUTIVE POWER OF A PROVINCE §4. THE FINANCIAL POWERS AND RESOURCES OF A PROVINCE

§1. PREPARATION OF THREE LISTS

A new status of independence for the provinces

THE Act of 1935 contemplates the establishment of the Federation of India. The status of Indian provinces must therefore undergo a vital change in the new Indian polity. They can no longer be considered to be only territorial divisions, created by the Central Government for their own convenience. Their powers and privileges cannot henceforward be attributed to mere delegation by the central authority. A federal unit has an independent existence of its own. It possesses certain rights which are guaranteed to it under the constitution. They cannot be tampered with or violated by the Federal Government. The powers of supervision and control entrusted to the latter are strictly limited and are defined as accurately as possible.

Division of subjects

In the constitutional framework as outlined by the Act of 1935, the relations between the Government of India and the provinces are conceived and defined on a federal basis. There is now a greater emphasis on the concept of equality than on the idea of subordination and obedience in formulating the status of the provinces *vis-à-vis* the Central Government. A distinct sphere of activity is marked out and assigned to each one of those two entities. A third common sphere is created for their concurrent jurisdiction and action. Three separate lists of subjects are compiled in accordance with this threefold division of governmental functions. They are exhaustively given in the Seventh Schedule of the Act. It is clearly laid down in section 8 that the authority of the Federation does not extend to subjects enumerated in the Provincial List.

The following are some of the important items in the Federal Legislative List: His Majesty's naval, military and air forces borne on the Indian establishment; naval, military

and air force works; local self-government in cantonment areas; external affairs; ecclesiastical affairs; currency and coinage; public debt of the Federation; posts, telegraphs, telephones, wireless, broadcasting, post-office savings banks; federal public services and the Federal Public Service Commission; Benares Hindu University and Aligarh Muslim University; Suryey of India; ancient and historical monuments; census; federal railways; maritime shipping and navigation; major ports; aircraft and air navigation; copyright and inventions; cheques, bills of exchange, etc.; arms and ammunition; petroleum; corporations; insurance; banking; customs duties; corporation tax; salt; state lotteries; taxes on income other than agricultural income; taxes on capital; succession duties; terminal taxes on goods or passengers carried by railway or air; naturalization.

The Federal Legislative List

The following are some of the important items in the Provincial Legislative List: public order, justice and courts; police; prisons, reformatories, etc.; public debt of the province, provincial public service and the Provincial Public Service Commission; land acquisition; local government; public health and sanitation; education; communications; irrigation and canals, etc.; agriculture; land tenures, agricultural loans, etc.; forests; development of industries in the province; trade and commerce within the province; intoxicating liquors and narcotic drugs; unemployment and poor relief; co-operation; land revenue; excise duties on alcoholic liquors for human consumption, opium, medicinal preparations containing alcohol; taxes on agricultural income; taxes on land and buildings; duties in respect of succession to agricultural land; capitation taxes; taxes on professions, trades, etc.; taxes on animals and boats; taxes on advertisements and sale of goods; local cesses; taxes on luxuries, entertainments, amusements, betting, gambling, etc.; stamp duties on documents; tolls.

The Provincial Legislative List

The following are some of the important items in the Concurrent Legislative List: criminal law; criminal procedure; civil procedure; evidence and oaths; marriage and divorce, adoption, etc.; wills, intestacy, etc.; transfer of property other than agricultural land, registration of deeds and documents, etc.; trusts and trustees; contracts; bankruptcy; legal, medical and other professions; newspapers, books and printing presses; lunacy; poisons and dangerous drugs; European vagrancy; factories; welfare of labour; unemployment insurance; trade unions,

The Concurrent Legislative List

industrial and labour disputes; contagious diseases; electricity; inland shipping and navigation; sanctioning of cinematograph films; detenus.

§2. THE LAW-MAKING POWER OF A PROVINCE

Definition of jurisdiction

The constitutional position in respect of the powers of legislation to be exercised by the Federation and the provincial units has been clearly stated in section 100 of the Act. The purpose of creating three different lists is obvious. They are intended to bring about a decentralization of authority. It is therefore laid down that the federal legislature has, and the provincial legislature has not, power to make laws with respect to any matter enumerated in the Federal Legislative List; that the provincial legislature has, and the federal legislature has not, power to make laws with respect to any matter enumerated in the Provincial Legislative List; and that the federal legislature, and the provincial legislature also, have power to make laws with respect to any matter enumerated in the Concurrent Legislative List.

Exceptional powers in a state of emergency

A special provision is made for cases of grave emergency when the security of India is threatened, whether by war or by internal disturbance. On such exceptional occasions the federal legislature will have power to make laws for a province with respect to any matter enumerated in the Provincial Legislative List. But no bill or amendment for that purpose can be introduced without the previous sanction of the Governor-General given in his discretion. Such a sanction is not to be given unless it appears to him that the provision proposed to be made is proper in view of the nature of the emergency. It is for the Governor-General, acting in his discretion, to declare by Proclamation that a state of emergency exists. Such a Proclamation may be revoked subsequently. But it will cease to operate at the end of six months unless Parliament directs otherwise.

Federal laws for two or more provinces by consent

In matters falling entirely within the provincial sphere, sometimes common legislative action may be felt to be desirable by two or more provinces. Their legislatures may request, by resolutions, that such matters should be regulated in their individual provincial areas by an Act of the federal legislature. In response to such requests, it will be lawful for the latter body to pass the necessary Acts. An Act so passed may, as regards any province to which it

applies, be amended or repealed by an Act of the legislature of that province.

Residual powers to be allotted by the Governor-General

In the actual conduct of the administrative machine, it may be revealed on some rare occasion that a particular matter which requires to be disposed of cannot be appropriately held to fall either in the Federal or the Provincial or the Concurrent sphere, as defined in the three Legislative Lists. The question then arises as to who would be the competent authority to pass legislation that may be required for its regulation. Every federation has to make provision for what are known as residual powers. In India, those powers are vested practically in the Governor-General by section 104 of the Act. He has been allowed, in his discretion, to empower either the federal legislature or the provincial legislature to enact laws pertaining to topics of such doubtful jurisdiction.

The federal law to prevail in cases of inconsistency

In spite of the delimitation of legislative spheres, some few instances of mutual entanglement and complicated relationship may be discovered in actual experience. The federal as well as a provincial legislature may happen to have passed Acts on an item which belongs to the Federal or to the Concurrent List. A provision of the provincial law may be in conflict with or repugnant to a provision of the federal law. In such cases it is definitely laid down that the federal law shall prevail and that the provincial law, to the extent of the repugnancy, be void.

Previous sanction of the Governor-General

The previous sanction of the Governor-General, given in his discretion, is made obligatory for the introduction of the following bills or amendments in a chamber of the provincial legislature: (1) a bill which affects an Act of Parliament extending to British India; (2) a bill which affects a Governor-General's Act or any ordinance promulgated by him; (3) a bill which affects matters which are in the discretion of the Governor-General; and (4) a bill which affects the procedure for criminal proceedings in which European British subjects are concerned.

No power to pass discriminatory laws against British subjects

Chapter III of Part V of the Act contains elaborate provisions with respect to discrimination by the Indian legislatures against British subjects domiciled in the United Kingdom or Burma. They apply both to federal and provincial laws. Provinces are therefore precluded from passing any kind of discriminatory legislation against British subjects,

British companies and corporations, British ships and aircraft, British registered medical practitioners, British persons carrying on any occupation, trade or business, etc. Thus, even 'provincial autonomy' has been subjected to serious limitations and deductions. They are defined in terms which are not only explicit but extremely wide. In the nature of things, every attempt made by Indian Ministers to improve India's material condition can be easily interpreted to affect adversely some British interest or other. The full liberty of action that is supposed to have been conferred upon the provinces is in reality a very considerably diluted product.

§3. THE EXECUTIVE POWER OF A PROVINCE

Definition of the provincial sphere

It is distinctly provided that the executive authority of each province extends to the matters with respect to which the legislature of the province has power to make laws (clause 2 of section 49). Within the framework of the Federation, the provincial sphere is differentiated and entrusted to the Provincial Governments. The latter are no longer under the general obligation of obeying the orders of the Governor-General in Council and of constantly and diligently informing him of their proceedings. They are presumed, prima facie, to have independence of judgement and action in their own domain. Provincial policy and administration are to be determined by the people of the province acting through their legislatures and Ministers. It is one of the fundamental principles of provincial autonomy that the affairs of the province should be left to be managed by those who live in the province and are directly affected by the nature of its Government.

Restrictions on the executive authority of the province

However, certain restrictions have to be necessarily imposed on the executive freedom of even autonomous provinces when they are federated together in one composite whole. In the federal constitution of a country like India, the number of such restrictions and the scope for their operation is much larger. That is inevitable in an atmosphere of reservations, safeguards and special responsibilities. It is necessary to understand the limits which have been prescribed in the conduct of the provincial administration.

In the first place it must be noted that the executive authority in the provinces cannot operate in matters which are not within its legislative competence. Federal subjects are therefore completely excluded from its jurisdiction. Nor

can it take any action which would discriminate in any manner against British subjects domiciled in the United Kingdom or Burma.

Securing respect for federal laws

It is also laid down that the executive authority of every province shall be so exercised as to secure respect for the laws of the federal legislature which apply in that province. An Act of the federal legislature may confer powers and impose duties upon a province in a matter not included in the Provincial List. Any extra cost of the administration involved in such cases will be paid by the Federation to the province.

Directions issued by the Federal Government

The Government of the province is required to be so conducted as not to impede or prejudice the exercise of the executive authority of the Federation. The latter can issue directions that are necessary for that purpose. Directions can also be given about the construction and maintenance of means of communication which are of military importance. The Federation may acquire any land situated in a province for any federal purpose. Disputes between provinces or between them and the federation about water supplies from any natural source have to be referred by the Governor-General to special *ad hoc* Commissions. Effect has to be given to the decisions that may be given by these bodies.

Appointment of an inter-provincial Council

His Majesty in Council may appoint an inter-provincial Council to consider matters affecting more than one province. It would be charged with the duty of (1) inquiring into and advising upon disputes which may have arisen between provinces; (2) investigating and discussing subjects in which the provinces and the Federation have a common interest; and (3) making recommendations for the better co-ordination of policy and action with respect to that subject.

§4. THE FINANCIAL POWERS AND RESOURCES OF A PROVINCE

Democracy is expensive

The success of a democratic government depends, to a very great extent, on the size of its purse. A government by and for the people must necessarily endeavour to elevate the people and to bring the joy of life to the masses. It must create social services and public utilities of various kinds and help to raise the material and spiritual level of the whole community. The very justification of popular democracy is the belief that it can become a mighty force of general progress. The

fulfilment of that ideal entails an enormous expenditure of money. If the necessary amounts are not forthcoming, the real objective of the democratic form of government will stand in danger of being entirely frustrated.

The difficulty of fixing central and provincial shares

The task of distributing sources of income between the centre and the provinces in a federation presents great difficulties. The demands of both are urgent. The duties that they perform are equally important. The responsibility of defence and foreign relations is entrusted to the Federal Government. It has also to manage several matters of internal administration which are common to the whole federal area. For the efficient discharge of all these obligations, it must be supplied with adequate funds. On the other hand, many nation-building activities are concentrated in the province. The positive benefits of a civilized, corporate life, the tangible good of the very institution of government, may be actually realized in the provincial sphere. The monetary need of the provinces will be therefore insatiable. A balanced, judicious compromise has to be effected between such conflicting claims. Reasonable satisfaction has to be given to both the parties.

Long and chequered history of provincial finance

The history of provincial finance in India is long and chequered. During the earlier years there was such a complete centralization of authority that the provinces could not claim a single pie out of their own revenues. They were mere instruments for carrying out the orders of the Government of India. In 1870 Lord Mayo initiated the policy of decentralization. It made considerable progress during the next forty years. The Montford Reforms introduced a more decisive change. They separated provincial finance from general finance and allowed much greater freedom to the provinces in the management of their individual budgets.

Inelastic revenues of the provinces

The great defect of the Montford scheme was that it gave to the provinces certain sources of taxation which were either very inelastic or very unpopular. Provincial revenues were found to be quite incapable of any appreciable expansion or growth. Ambitious Ministers in charge of transferred departments were considerably handicapped as a result of their inability to secure sufficient finances to further their projects of reform. It was a tragic feature of the whole arrangement that the popular section of the Indian administrative system should be subjected to a financial starvation which was almost

incurable. The Act of 1935 has attempted an improvement over this unfortunate position.

Revenues from the Provincial Legislative List.

It must be clearly understood at the outset that all revenues derived from subjects in the Federal List will naturally go to the Federation. Similarly, all revenues obtained from subjects in the Provincial Legislative List will be taken by the provinces. But some additional sources of income are also provided for the latter, and they have been specified in Part VII of the Act. A distinguished financial expert, Sir Otto Niemeyer, was subsequently asked to make recommendations for determining some important details which were not precisely laid down in the Act. His report was published in 1936, and all the suggestions it contained have been accepted.

Additional sources

Over and above the proceeds of taxation in respect of matters in their own sphere, the provinces will now have the following potential sources for obtaining further incomes for their own use :

Succession duties, etc.

(1) Duties in respect of succession to property other than agricultural land; certain stamp duties; terminal taxes on goods and passengers carried by railway or air; taxes on railway fares and freights. These will be levied and collected by the Federation, but their net proceeds are not to be credited to federal revenues. They will be wholly assigned to the provinces and distributed among them as prescribed by an Act of the federal legislature.

Income-tax

(2) Income-tax : this item has been a wholly central source of revenue till now. Even hereafter, it will continue to be levied and collected by the Federation. But it has been decided, after the Niemeyer Report, that 50 per cent of the net proceeds of this tax should be assigned to the provinces for their use. The share of each province from the total amount available for distribution among them is fixed as follows : Bombay and Bengal, 20 per cent each; Madras and the United Provinces, 15 per cent each; Bihar, 10 per cent; the Punjab, 8 per cent; the Central Provinces, 5 per cent; Assam, Orissa and Sind, 2 per cent each; and the North-West Frontier Province, 1 per cent.

However, this arrangement is not intended to take effect immediately on the inauguration of provincial autonomy. The Government of India have been passing through a severe financial stringency for the last eight years. Their income

has dwindled and there have been serious deficits in their budgets. Their expenditure is declared to have reached an irreducible minimum. The new constitution has also inevitably added to their financial burden. In such a state of unstable equilibrium, it is considered risky for the Central Government to part with a substantial portion of their own assets. The Act has therefore provided that no portion of the income-tax receipts may be granted to the provinces as long as the Government of India feel that they cannot afford to do so. Sir Otto Niemeyer has recommended that for a period of ten years, the central authority should be permitted to retain the whole or part of that amount for their own expenditure. There is therefore no hope of any assistance or relief to the provinces from this particular source in the near future.

No immediate grant

(3) Duties on salt; federal duties of excise; export duties —these will be levied and collected by the Federation. But the whole or part of their proceeds may be paid to the provinces by an Act of the federal legislature.

Salt tax

The Niemeyer Report has recommended that 62½ per cent of the net proceeds of the jute export duty be assigned to the provinces in which jute is grown.

Export duty on jute

It is a matter of primary importance that the units of a federation should be absolutely solvent. There must be a perfect balance between their respective revenue and expenditure. A grave financial condition of any province cannot be looked upon as merely a domestic concern of that particular unit. It must affect the whole country and must be taken cognizance of by the Central Government.

Financial solvency of the federal units

An effort was therefore made to investigate the existing and prospective budgetary position of all the provinces that were proposed to be united into the Federation of India. Even Sir Otto Niemeyer examined the question. It was found that some of the provinces were so deficient in resources that with their own revenues only they could not maintain an administration of the minimum standard of efficiency. There were also other provinces like the North-West Frontier Province in which strategic considerations transcended all other claims. The military expenditure incurred by these units, though geographically it falls within their area, is really incurred for the whole country. That huge burden cannot

Budgetary position of the Indian provinces

obviously be shifted to, nor can it be borne by, the limited means of the province alone.

Subventions to certain provinces

It has been therefore decided that in all such cases where the need for assistance is clearly proved, the Federal Government should make grants in aid every year from its own revenues. The following figures have been recommended in the Niemeyer Report: the United Provinces 25 lakhs for five years; Assam 30 lakhs; the North-West Frontier Province 100 lakhs, to be reconsidered after five years; Orissa 40 lakhs, increased to 47 lakhs in the first year and to 43 lakhs in the second, third, fourth and fifth years; Sind 105 lakhs, increased to 110 lakhs in the first year and diminished after the tenth year by large sums every year so that the whole subvention may be wiped out within about forty years.

The power of borrowing conferred on the provinces

The power of borrowing money upon the security of its revenue has been conferred upon the province. The conditions and limits of such loans are to be determined, from time to time, by an Act of the provincial legislature. No moneys can be borrowed outside India without the consent of the Federation. The latter may also make loans to a province or give guarantee in respect of loans raised by a province.

CHAPTER XVI

THE PROVINCIAL EXECUTIVE

The Governor and the Council of Ministers

THE executive Government in the province is composed of the Governor and a Council of Ministers. The Governor is not merely the titular head, but the actual *de facto* ruler. He has always been in possession of large powers, and his influence over the administration, both legal and personal, is enormous. He was described as the keystone of the dyarchical structure which was inaugurated by the Montford Reforms. Even in the administration of autonomous provinces which have been formed by the Act of 1935, the Governor holds a unique, pivotal position. It is necessary to understand clearly the part which he is called upon to play in the operation of self-government in the provincial sphere. The duties of the Council of Ministers, its composition and the method of its working, will also require detailed study. For convenience, it is best to separate the two constituents of the provincial executive and treat them individually. This is done in the two following sections.

A. THE GOVERNOR

§1. APPOINTMENT, QUALIFICATIONS AND SALARY §2. THREEFOLD CLASSIFICATION OF HIS POWERS §3. EXECUTIVE POWERS §4. LEGISLATIVE POWERS §5. FINANCIAL POWERS §6. SPECIAL RESPONSIBILITIES §7. EMERGENCY POWERS §8. IMPORTANCE OF THE OFFICE OF GOVERNOR

§1. APPOINTMENT, QUALIFICATIONS AND SALARY

Governors of the three presidencies

The office of Governor is very old in the history of British India. It has been in existence for nearly three centuries. Till the middle of the eighteenth century, the duties of the Governors were comparatively simple. They had to organize the purchase and sale of goods on behalf of their masters and to negotiate with the Indian sovereigns for special concessions for their trade. There were only three Governors, and they were located in the cities of Madras, Bombay, and Calcutta.

Their subordination to the Governor-General

When the Company began to be involved in Indian politics, the Governors were called upon to fight wars and to try their hands at diplomacy. It was soon realized that the task of empire-building required a common plan and concerted action on the part of all the officials of the Company serving in different parts of India. The Regulating Act therefore created the office of Governor-General. His supremacy extended in course of time to the whole country. Since then, the Governors of provinces lost their independence and they became subordinates of the Central Government. All the same, they have continued to be responsible heads of large territorial areas and have been invested with great prestige and authority.

Equality of powers over the provinces

The number of Governors has now increased to eleven in consonance with the increase in the number of provinces. In the possession and exercise of powers over the provincial units in their charge, all Governors are absolutely equal. Their control over the administrative machinery of the province is defined in the same constitutional language. The official status and privileges which they enjoy within their respective jurisdictions are identical in all cases. The factors which establish the pre-eminence of the Governor in all aspects of provincial life are entirely similar to each other in every province.

Differences in salary and allowances

Yet, in spite of this equality in prestige and power, there is a kind of gradation even in the exalted office of Governor. All the provinces are not the same in size. Some are extensive and populous, others are comparatively small. Some are industrially and commercially advanced and have therefore a large revenue. Others are predominantly agricultural and are endowed with smaller resources. Some have a historical tradition of long standing, others are of recent growth. This difference in the material circumstances of the provinces is reflected in the salaries and allowances that are sanctioned for their Governors. All these high dignitaries do not receive the same amount of money by way of emoluments. There are considerable variations in them as shown by the figures in the following statement :

SALARIES AND ALLOWANCES PAYABLE TO PROVINCIAL GOVERNORS

Name of Province	Annual salary	Annual Allowances									Equipment and travelling charges when appointed from Europe	Leave allowances per month
		Renewal of furniture	Maintenance of furniture	Military Secretary and establishment	Surgeon and his establishment	Band and Bodyguard	Tour expenses	Sumptuary allowances	Miscellaneous including maintenance of cars	Total		
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	£	Rs.
Madras ...	1,20,000	14,000	21,500	1,12,000	36,600	1,69,000	1,13,000	18,000	92,000	5,76,100	2,000	4,000
Bombay ...	1,20,000	23,000	25,000	1,36,000	33,600	1,23,000	65,000	25,000	1,08,000	5,38,600	2,000	4,000
Bengal ...	1,20,000	20,500	34,000	1,21,000	34,800	1,50,000	1,22,000	25,000	1,00,000	6,07,300	2,000	4,000
United Provinces ...	1,20,000	4,000	14,500	1,16,000	...	...	1,25,000	15,000	23,000	2,97,500	1,800	4,000
Punjab ...	1,00,000	3,000	10,500	88,000	...	...	60,000	12,000	21,700	1,95,200	1,500	4,000
Bihar ...	1,00,000	4,500	13,000	75,000	...	...	60,000	6,000	21,700	1,80,200	1,500	4,000
Central Provinces and Berar ...	72,000	2,900	9,800	61,000	...	...	26,000	6,000	16,600	1,22,300	1,200	3,000
Assam ...	66,000	1,000	4,000	63,000	...	...	55,000	6,000	14,100	1,43,100	1,200	2,750
North West Frontier Province ...	66,000	1,750	5,000	68,000	...	...	18,000	6,000	14,100	1,12,850	1,200	2,750
Sind ...	66,000	1,000	4,000	59,000	...	...	30,000	8,000	17,800	1,19,800	1,200	2,750
Orissa ...	66,000	2,500	8,000	40,000	...	...	35,000	6,000	11,500	1,03,000	1,200	2,750

Differences in qualifications: presidency Governors

There is a further important distinction. Technically speaking, all Governors are appointed by His Majesty. However, it is a fundamental principle of the British constitution that the King always acts on the advice of his Ministers. It has been a long-established practice that the Governors of the older presidencies of Madras, Bombay and Bengal are selected on the recommendation of the Secretary of State for India. They are men in the public life of Britain, holding a prominent place in the party in power and often possessing some parliamentary experience. In a few instances—as in the case of Sir John Anderson, Governor of Bengal—they may be distinguished officials in the British Civil Service. But these governorships are definitely put beyond the reach of persons who are serving in India. They are reserved for the ambition and talent of influential members of the British aristocracy and serve as some of the substantial prizes of British public life. These persons are expected to possess breadth of vision and sympathy which are extremely useful in governing a foreign people.

Governors of the other provinces

On the other hand, the Governors of all the remaining provinces, now eight in number, are appointed on the recommendation of the Viceroy. They are senior members of the Indian Civil Service, with long administrative experience in various departments. They are supposed to have brilliant official records of industry, tact and success in the performance of their duties. A young civilian, standing on the lowest rung of the bureaucratic ladder as assistant collector, can hope to rise, through the successive stages of collector, commissioner, and secretary to the Government, to the eminence of the provincial Governor.

Prize posts

The substantial salary and the immense powers and status of the office make it one of the most forceful inducements to young Englishmen to join the I.C.S. It is naturally the keen desire of the conqueror to maintain a proper level of efficiency in the Government, as much from the point of view of satisfying British interests and needs as for assuring the contentment of the Indian people. Englishmen of real merit and ability are required to achieve that object. It is felt that the right type of Englishman can be easily persuaded to seek a career in India, if the ultimate prize which he can aspire to attain is big enough to gratify his ambition. One criticism is made against this practice. It is said that the bureaucratic mind usually

develops a rigidity and inflexibility of outlook and becomes impervious to the absorption of new ideas. A ruler, of all persons, ought to be completely immune from these defects.

§2. THREEFOLD CLASSIFICATION OF HIS POWERS

The basis of classification

The powers conferred upon the Governor—as also upon the Governor-General—by the Act of 1935 can be divided into three categories. He has to act (1) in his discretion; or (2) in his individual judgement; or (3) on the advice of his Ministers who are responsible to the legislature. The matters included in each one of these three categories may pertain to any aspect of the administration. They may be executive, legislative, financial, or may concern the public services. The classification is not based on an enumeration of different departments. It is made by a definition of the manner in which the Governor is called upon to exercise his authority in the task of governance.

Powers exercised in his discretion

Where the Governor is empowered to act in his discretion, he is not required to consult his Ministers at all. He can take decisions by himself and give effect to them. To the extent to which provision is made in the Act for the exercise of the Governor's discretionary powers, there is a real diminution of provincial autonomy. Popularly elected Ministers are deliberately precluded from having any voice in this particular sphere. Some of the most vital subjects of provincial administration are brought under the operation of this arrangement.

Powers exercised in his individual judgement

Where the Governor is empowered to act in the exercise of his individual judgement, he is expected to do so after consultation with his Ministers. This inference can be drawn from the language of the Act and also from the amplification contained in the Joint Parliamentary Committee's Report. The Governor, of course, is not bound to accept the Ministers' views and can act even in opposition to them. But the procedure of work is intended to be so formulated that Ministers can get an opportunity of acquainting the Governor with their considered opinions and thereby attempting to influence his decisions. This is another substantial slice cut off from provincial autonomy. Popular Ministers are denied any effective control over the large number of important matters which are assigned to the individual judgement of the Governor.

Control of the Governor-General

It is explicitly laid down that when the Governor acts in his discretion or in the exercise of his individual judgement, he will be under the general control of the Governor-General and will have to comply with such particular directions as may be issued by the latter in his discretion. So that if, in an exceptional instance, a really constitutional-minded Governor voluntarily chooses to consult his Ministers and to act on their advice even in respect of matters which are reserved for his discretion or for his individual judgement, his action may be hampered by orders issued by the superior authority of the Governor-General or ultimately of the Secretary of State.

Powers exercised on the advice of Ministers

The third category consists of items in which the Governor has to act on the advice of his Ministers. And as the latter are members of the legislature and responsible to it, the concept of provincial autonomy may be supposed to be tangibly represented by and in this particular domain. However, it must be noted that the Governor is not excluded from the provincial Cabinet as his master, the King of England, is excluded from the British Cabinet. He is empowered not only to be present at meetings of the Council of Ministers but also to preside over them. He can urge his own views and argue his own points. His participation in the debates is bound to have a considerable effect in shaping the Ministers' attitude with regard to general policy and also in respect of particular questions that come up before them for disposal. It is of course presumed that even if the Governor does not see eye to eye with the Ministers and actually dissents from their opinions, he will allow them to have their own way and not override their decisions.

§3. EXECUTIVE POWERS

He appoints Ministers

Ministers have to be chosen and summoned by the Governor in his discretion and they can be similarly dismissed by him. It is directed in the Instrument of Instructions that the Governor should use his best endeavours 'to select his Ministers in the following manner, that is to say, to appoint, in consultation with the person who in his judgement is most likely to command a stable majority in the legislature, those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so

acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.'

He presides over the meetings of Ministers and makes rules of business

The Governor, in his discretion, presides over meetings of the Council of Ministers. He has also, in his discretion, but after consultation with the Ministers, to make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of portfolios to Ministers. In order that he should not be ignorant of the happenings in the various departments, the above rules will include provisions requiring Ministers and secretaries to the Government to transmit to the Governor all important information concerning the business of the Provincial Government and particularly those matters which involve the Governor's special responsibilities. He will be thus in close touch with the course of provincial administration from day to day and will be able to influence the general trend as well as the details.

His powers in respect of the Police Department

In the scheme of provincial autonomy, the subject of law and order is entrusted to the authority of Ministers. However, Parliament was not prepared to transfer that amount of power into the hands of Indians in respect of this subject that it was willing to concede in others. It was considered risky to allow Indian Ministers to have an unfettered sway over the Police Department, and it was therefore decided to bring it under a closer supervision of the Governor. In making, amending, or approving any rules, regulations, or orders, relating to any Police force whether civil or military, he is required to exercise his individual judgement. For combating crimes of violence which are intended to overthrow the Government, the Governor has been given special power to act in his discretion. He can also, in his discretion, make rules for securing that the sources of information with reference to such crimes shall not be disclosed except in accordance with his direction.

His powers in respect of the Services

It is one of the primary principles of the Act of 1935 that the superior services should be kept beyond the reach of the Indian legislature. Even in the operation of provincial autonomy, the Ministers and legislatures have no control over officials in the Indian Civil Service, the Indian Police Service and others appointed for the province by the Secretary of State, though their salaries are charged on the provincial revenues. Certain posts are reserved for being filled by persons chosen by the

Secretary of State. The Governor, in his individual judgement, has to determine the appointments to these posts, transfers, any promotions of the persons holding them, any order relating to their leave if it exceeds three months, and any order suspending them. No order which punishes or formally censures any such person or affects adversely his emoluments or pension can be made, if he is serving in a province, except by the Governor exercising his individual judgement. Appointments of district judges in a province and their postings and promotions have to be made by the Governor exercising his individual judgement. He has also in his discretion to appoint the chairman and other members of the provincial Public Service Commission and to make regulations regarding their number, their tenure of office and conditions of service. It will be easily seen from this multiplicity of powers how even in the normal routine of purely administrative matters, the Governor has been placed in a position of unquestioned supremacy.

§4. LEGISLATIVE POWERS

Summoning, proroguing, dissolving the legislature; assent to bills

The Governor in his discretion can summon the legislative chambers or chamber in a province, can prorogue them and can dissolve the lower house. Similarly, he can address either chamber or both together. He can, in his discretion, send messages to the legislature in regard to a pending bill or for any other purpose. Whenever there is disagreement between the two chambers in provinces where the bicameral system has been instituted, the Governor, in his discretion, has to summon a joint sitting to remove the deadlock. His assent, given in his discretion, is required for any bill passed by the provincial legislature. He may withhold that assent or reserve the bill for the consideration of the Governor-General. He may also return it to the legislature with a message that it should be reconsidered.

Making rules of procedure in certain matters

The Governor in his discretion but after consultation with the Speaker or President has to make rules for regulating the procedure and conduct of business in the legislature (1) in relation to matters which affect the discharge of those of his functions which have to be performed in his discretion or in his individual judgement; (2) for securing the timely completion of financial business; and (3) for prohibiting the discussion of or the asking of questions on matters connected with Indian states or tribal areas. In a province where

there are two chambers, the Governor, after consultation with the President and the Speaker, has to make rules for fixing the procedure of their joint sittings.

His previous sanction necessary in certain cases

Unless the Governor in his discretion thinks fit to give his previous sanction, no bill or amendment can be introduced in the provincial legislature if (1) it seeks to repeal or to amend or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or (2) it seeks to repeal or to amend or to affect any Act relating to any Police force.

Issuing of ordinances—on the advice of Ministers

Till the Act of 1935, the Governors had no power to promulgate ordinances. In consistence with their new status as heads of federal units, that power has been now conferred upon them. Two types of ordinances have been provided for. In one, the promulgation will be made on the advice of Ministers or, in certain cases, in the exercise of the Governor's individual judgement, if at any time when the legislature is not in session, the Governor is satisfied that immediate action is necessary. Such an ordinance must be laid before the provincial legislature and will cease to operate at the expiration of six weeks from the reassemblage of the legislature, or on an adverse resolution passed by that body.

The other type of ordinance is of a more absolute character.

In his discretion

If at any time—that is whether the legislature is in session or not—the Governor is satisfied that immediate action is necessary for the discharge of those of his functions which have to be performed in his discretion or in the exercise of his individual judgement, he may promulgate an ordinance as he thinks it necessary. It has not to be laid before the provincial legislature at any time and can continue to be in operation for a maximum period of six months at a stretch, to be followed by a further extension not exceeding six months if found necessary.

Certification in a more direct form

The Montford Reforms had created a new weapon for use by the Governor-General and the Governor. It was called the power of certification. The Act of 1935 has not only retained that instrument of absolutism but made it much simpler to operate. The process of certification required that a bill should first go to the legislature, should be rejected by it and then should be certified by the Governor into an Act. In the new system, even the semblance of consultation

with or consideration by the legislature may be dispensed with. The position is made quite clear by section 90 of the Act.

The Governor's Acts

It is laid down that if at any time it appears to the Governor that certain legislation is necessary for the discharge of those of his functions which have to be performed in his discretion or in his individual judgement, he can adopt one of the two following courses: (1) He may enact forthwith a Governor's Act containing such provisions as he considers necessary, or (2) he may send to the legislature the draft of a bill which he considers necessary. In the latter case, the legislature may present an address to the Governor, within a period of one month, expressing its opinion on the bill. He may thereafter pass it into a Governor's Act, either with such amendments as he deems necessary or in its original form.

These Governor's Acts have the same force and effect as Acts passed by the provincial legislature. However, they have to be communicated through the Governor-General to the Secretary of State and laid by the latter before each house of Parliament. A single mortal head of a Provincial Government is thus enabled, in the plenitude of his wisdom and authority, to defy the collective opinion of scores of elected representatives who constitute the legislature of the province. Even as an extraordinary provision, it suggests an incongruous despotism in the picture of what is alleged to be provincial autonomy!

§5. FINANCIAL POWERS

Causing the budget to be prepared

The Governor has considerable powers in matters of finance. It is his duty to see that for every financial year a budget is prepared for the province and laid before its legislature. The statement must show separately items on which that body will be called upon to vote expenditure and items whose expenditure is charged to provincial revenues. The question whether a particular item is or is not included in the latter category has to be decided by the Governor in his discretion.

Power to restore cuts in the votable items

In respect of the votable portion of the budget, the Legislative Assembly of the province can assent to, refuse, or reduce any demand. But if in the opinion of the Governor, the refusal or reduction of any such grant would affect the due discharge of any of his special responsibilities, he can

restore, wholly or partly, the cuts that may have been made by the Assembly. This is also a pernicious reproduction of the old power of certification. No demand for a grant can be made except on the recommendation of the Governor.

Bills to be introduced on his recommendation

Bills or amendments on the following subjects cannot be introduced in the provincial legislature except on the recommendation of the Governor: (1) for imposing or increasing any tax; (2) for regulating the borrowing of money or the giving of any guarantee by the province; (3) for declaring any expenditure to be expenditure charged on the revenues of a province or for increasing the amount of any such expenditure.

§6. SPECIAL RESPONSIBILITIES

The policy of the Act

The Act of 1935 contains many reservations and safeguards. The grant of power in any direction has been invariably accompanied by certain restrictions or other counteracting provisions which minimize the extent of the grant. In pursuance of that policy, a new class of obligations has been created under the constitution. They are known as the special responsibilities of the Governor-General and the Governors, and these high officials are required to fulfil them in the exercise of their individual judgement. The following list has been enumerated for the Governor:

Kinds of special responsibilities

(1) The prevention of any grave menace to the peace and tranquillity of the province; (2) safeguarding the legitimate interests of the minorities; (3) securing the rights and the legitimate interests of the Services; (4) preventing any kind of discrimination against British citizens in the sphere of executive action; (5) securing the peace and good government of the partially excluded areas; (6) protecting the rights of Indian states and the rights and dignity of their rulers; and (7) securing the execution of the orders and directions issued by the Governor-General in his discretion.

Provisions for C. P. and Berar and Sind

The Governor of the Central Provinces and Berar has also the special responsibility of securing that a reasonable share of the revenues of the province is expended in or for the benefit of Berar. The Governor of Sind has the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

The comprehensive nature of special responsibilities

It will be easily seen that the object of defining these special responsibilities is not merely to set aside a distinct group of departments for the personal management and attention of the Governor. They do not attempt to introduce a division of the Provincial Government into two sections, one handed over to the Ministers and in which they can have complete freedom and the other retained and reserved for the Governor. In fact, they are extremely generic in their conception and can be interpreted to apply to the whole sphere of the Provincial Government.

Illustrations

For instance, the peace and tranquillity of a province may be believed to be endangered by what may be construed to be the undesirable activities of any department. Similarly, the minorities and the Services are inevitably present in every aspect of administration. The possibility of discrimination against British citizens in any manner can also exist in every subject. The range of the Governor's supervision and the scope for his superior action are therefore extremely comprehensive.

Vague expressions

Further, it must be realized that the terms 'grave menace', 'legitimate interests', 'discrimination', 'peace', 'rights', 'dignity', etc. are very vague and elastic. According to the viewpoint and interest of the user, they can be made to yield a great variety of meanings. A Governor who is fond of power will find them to be convenient excuses for interference. By putting a wide construction on all their subtle implications, he can indulge in a constant encroachment on the work of responsible Ministers.

§7. EMERGENCY POWERS

Emergencies

Sometimes, a grave constitutional crisis may arise in the province and the machinery of government as provided for in the Act may fail to operate. For example, the majority party in the legislature may refuse to form a Ministry and may not allow others to form it. There would be then a complete deadlock and governmental activities may be threatened with stoppage.

Issue of Proclamations

The Act has made special provision to meet abnormal situations of this type. Section 93 empowers the Governor to issue a Proclamation in such circumstances and declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion. He may also assume

to himself all or any of the powers vested in or exercisable by any provincial body or authority. The Proclamation may contain all such incidental and consequential provisions as may be necessary, and may suspend, in whole or in part, the operation of any provision of the Act relating to any provincial body or authority, except the High Courts.

The period of their continuance

Such a Proclamation has to be communicated forthwith to the Secretary of State and to be laid by him before each House of Parliament. It must cease to operate at the end of six months after it is issued, unless allowed to be further continued by resolutions of Parliament. In no case, however, can it remain in force for a period of more than three years.

Concurrence of the Governor-General necessary

A Proclamation has to be issued by the Governor in his discretion and only with the concurrence of the Governor-General, given in his discretion. It may be revoked or varied by a subsequent Proclamation.

Thus, all the executive and legislative work in the province can be temporarily taken over by the Governor directly in his charge and the wheels of the administrative machinery can continue to get their momentum from his driving force, till normal conditions are restored.

§8. IMPORTANCE OF THE OFFICE OF GOVERNOR

He is not merely a constitutional head

The cumulative effect of all these powers, normal and special, ordinary and extraordinary, legislative, executive and financial, makes the position of the Governor extremely formidable, if not invincible, in the working of provincial autonomy. By no stretch of imagination can he be described, nor is he intended to be, a mere constitutional head, a dignified ornament which shines with light but is without life. Even in what is advertised to be provincial autonomy, he exists as a mighty force which can give appreciable turns to the current of provincial affairs.

Representative of the conquering power

Even in a free country, such a dominant position of the *de jure* head of a state would be incompatible with the principle of ministerial responsibility. In a conquered country the situation becomes worse, because the Governor is also the representative of the sovereign masters. He is specially commissioned to be the custodian of their interests and is not therefore divested of his active constitutional authority. The inexorable logic of events dictates its own conclusions.

B. The Council of Ministers

§1. APPOINTMENT §2. QUALIFICATIONS, TENURE AND SALARY §3. COLLECTIVE RESPONSIBILITY OF THE CABINET §4. IMPORTANCE OF THE OFFICE OF PRIME MINISTER §5. THE POSITION OF THE SERVICES

§1. APPOINTMENT

Features of a responsible democracy

Democracy is a form of government through which the people govern themselves. There are different kinds of democracy. In a country like England it works on what is described as the parliamentary principle. The people are fully represented in the legislature which is elected by adult suffrage, and the leaders of such a legislature are invested with executive direction and authority. They become Ministers of state and direct its affairs as long as the majority of the legislature and the nation has confidence in them. In the last resort therefore the people make and control their Government.

The ideal for India

The Indian polity has also to be shaped in accordance with the ideals of democracy and preferably of the parliamentary or responsible type. The introduction of provincial autonomy is supposed to be a step in that direction. Therefore the pertinent questions to be asked are, is there a popularly elected legislature in the province, and is the provincial executive created by and entirely subordinate to it? To the extent to which they can be answered satisfactorily, the autonomy could be said to be real. The position of the Council of Ministers has to be examined in the light of the final goal of responsible Government.

Appointment made by the Governor

Under the Act of 1935, the Ministers have to be chosen and summoned by the Governor in his discretion and they are to hold office during his pleasure. They must of course be members of the provincial legislature, and if any one of them is not so at the time of his selection, he must find a seat for himself within six months of his appointment as Minister. It may be inferred from the Instrument of Instructions that the constitutional practice which is associated with Cabinet formation in responsible Governments is to be adopted in India. The Governor has to send for the leader of the largest party in the legislature and entrust him with the task of forming a Ministry. The leader may accept the invitation and suggest names of his political friends and comrades for

the different portfolios. The Governor accepts the list and the Ministry is then installed in office.

Invitation to the leader of the majority party

If such a practice is scrupulously and rigidly followed, the selection of Ministers, though legally vested in the Governor, will, in effect, be made by the people. That in fact is the essence of parliamentary government and the genuinely democratic principle that it embodies. There are different political parties in the country, each having its own organization and a recognized leader as its head. Each party has its own policy and programme which are submitted for the verdict of the final masters, namely the electors. That party which is successful in capturing the largest number of seats in a general election can be said to be the favourite of the country. It may be taken to have received a mandate from the people to carry out its policy and programme. Even the Governor has to submit to the decision of the nation and call upon the authorized leader of the largest political group to shoulder the burden of the administration.

A difficulty about the inclusion of minorities

However, one serious difficulty may arise in the proper operation of such a salutary system. The Governor is enjoined to see that, so far as is practicable, members of important minority communities are included in the Ministry. Now it may happen that the largest party in the legislature has no member who belongs to the minority communities. Or even if there are such members in its ranks, the leader and the party may not think it feasible to elevate them to the Cabinet on account of their inexperience or for any other reason. Would the Governor, under these conditions, endeavour to impose some other man upon the party which is entitled to be in power on account of its numerical strength? Can he insist on saying that a place must be found for a stranger in the party counsels? Would the formation of a Ministry be hampered as a result of such a serious conflict?

Deadlock unlikely

The answer will depend on the nature of a particular situation. If a party has an overwhelming or an absolute majority in the legislature and if its discipline is perfect, the Governor dare not carry his insistence to extremes, because thereby he will invite trouble on his own head. With a militant majority in constitutional opposition, the normal work of government would come to a standstill. Nor can emergency powers be invoked for putting an end to such a minor impasse. To do so would be an outrage on all sense of proportion. The

language of the instruction itself is quite guarded. It contains the important saving clause 'so far as is practicable'. No sensible Governor can precipitate a crisis in the face of such a clear declaration, though the word 'practicable' may be twisted to yield a required meaning.

His personal influence in the formation of coalitions

Where even the largest political party does not command an absolute majority in the legislature, the Ministry will be in the nature of a coalition of different groups. In such weakness of organized politics within the province, the Governor can certainly exercise a good deal of personal influence. There is no fear of a solid block effectively obstructing his will by going into opposition because even the biggest block does not make a majority. He can therefore play his part with consummate skill and by negotiations and conversations of various kinds succeed in getting a Ministry formed after his own heart.

§2. QUALIFICATIONS, TENURE AND SALARY

He must be a member of the legislature

The qualifications of a Minister are not prescribed in the Act, nor could they be so prescribed, except for the requirement that he must be a member of the provincial legislature. It is not laid down that he must be an elected and not a nominated member or that he must belong to the lower and not to the upper chamber. A nominated member of the latter body can be therefore included in the Council of Ministers.

He must be a leading member of a political party

It is obvious that a Ministry will be composed of leading members of a political party. Individually speaking, almost every one of them must enjoy in the country at least that degree of popularity which enables him to get elected to the legislature from one constituency or another. In the party organization, he must stand in the front rank. That implies that he must be known to be endowed with the gifts of intelligence, industry and character which mark him out for responsibility and distinction.

He must possess a quick grasp of things and common sense

Indeed, the test is not supplied by a brilliant university career, though it may count as a valuable asset. Several Ministers of England, for instance, have possessed an excellent academic record and have been known for their scholarship, though there are also others who have never been inside a university and have not been blessed with a degree. An innate aptitude and love for public life and keen political

ambition are the qualities essential in a Minister. He may not have the specialized training of an administrator, but his strength must lie in a robust common sense, quick understanding and comprehensive vision. He must have the make up of a thinker.

The number of Ministers

The number of Ministers in a province is not prescribed by the Act and presumably it is left to the convenience of the province. In April 1937 Bombay had four Ministers, Madras six, Bengal eleven, the Punjab seven, the United Provinces eight, the Central Provinces four, Assam five, Bihar four, Orissa three, Sind three, the North-West Frontier Province three.

No fixed tenure

In the operation of parliamentary government, no Minister can have a fixed tenure of office defined in law. He continues to be in power as long as his party has the complete confidence of the legislature. The maximum period for which a Ministry can hold office at a stretch is equal to the maximum period of the life of a legislature. In the Indian provinces the lower chamber or the Legislative Assembly has a life of five years, unless it is dissolved earlier by the Governor. It can be said that normally speaking, a Minister will be in his post for a period of five years; sometimes it may be less, if the Ministry is thrown out earlier by a vote of no confidence; sometimes it may be more, if the party is once again returned to power after a general election.

The practice under the Montford Reforms

In regard to the salaries of Ministers, an important departure has been introduced by the Act of 1935. The Montford Reforms had made them entirely votable. Members of the legislature were called upon to sanction the amount in respect of every Minister while passing the annual budget. They had the right and the opportunity to reduce or even to reject the whole demand. This was a living check on the policy and actions of Ministers, and one of the most effective ways of indicating the legislature's disapproval of ministerial conduct. Such motions, if they were passed, were equivalent to votes of censure and resulted in the dismissal of the Ministers.

Salaries fixed by an Act of the Legislature

Now, the system has changed. It is laid down that the salary of Ministers will be fixed by an Act of the provincial legislature, and the Act can be amended whenever any changes are felt to be necessary by the people's representatives. Thus the remuneration of the highest servants of the state is left

to be determined by the chamber which symbolizes democracy.

But not annually voted for every Minister

However, the salary of particular individuals who hold the office of Minister is not annually submitted to the legislature for its sanction, and it cannot be varied during their term of office. In fact, it is placed in the list of items which are charged on the revenues of the province and which are therefore non-votable. The legislature can no longer discuss in the budget session the general working of ministerial departments by proposing a nominal cut in the salaries of Ministers. Nor can it think of driving them out of office by reducing their salaries to a ridiculously low figure. Hereafter, the only method of a direct attack on the Ministers will be to propose a motion of no confidence in them. When that order to quit is passed, no Minister can continue to hold office, at least in normal circumstances.

§3. COLLECTIVE RESPONSIBILITY OF THE CABINET

The Cabinet is one indivisible whole

One of the fundamental concepts of the Cabinet form of government is the collective responsibility of Ministers. Their number will be certainly more than one—in a country like England it is over twenty. But they all work as a united team, as one corporate and indivisible unit. All of them come into office and go out of office together. All hold themselves responsible for the mistakes or shortcomings of any one of the group and every one of the group is prepared to sacrifice himself in the interests of all. To the head of the state and also to the public, they present themselves as a homogeneous entity, inspired by a common ideology and adhering to a common programme.

Its members belong to the same party

The formation of such a coherent Council implies that its members are connected with one another by similarity of outlook. They must possess the same sympathies. Their loyalty to principles and persons must be common to a great extent. They must feel attracted to one another by an inherent affinity, by kindred ways of thought and feeling. In fact, the Cabinet consists of persons who are members of the predominant political party in the legislature, owing allegiance to the same leader and pledged to carry out the same programme. All these conditions will have to be automatically reproduced in India with the introduction of responsible government.

Meaning of the portfolio system

The Cabinet conducts its business by what is known as the portfolio system. The work of administration can be naturally divided into two categories. Firstly, there are matters of routine and minor detail which may require the attention of the head but which are too insignificant to be brought before the whole Council of Ministers. They are disposed of by a Minister in his individual discretion and judgement, though the responsibility even for them is shared by all his colleagues. Then secondly, there are important questions of principle and policy affecting a particular department. The Minister may formulate his own scheme of reform and propose certain innovations. But he cannot take any action without consulting his colleagues. All important issues have to be submitted to and thrashed out by the whole Cabinet. There would be a free exchange of ideas among its members. Criticisms would be made and modifications suggested and ultimately the scheme would emerge in a form which is acceptable to all. Then it becomes the combined obligation of the whole unit, which is bound to stand or fall by it.

Differences between colleagues

What matters are to be considered as minor and what as major is left to the common sense of a Minister. There can be no hard and fast rule to bind him in this respect. Sometimes differences of opinion may arise about his interpretation, but they can be easily removed. Even on questions of principle, as the Cabinet is constituted by persons who are politically alike, a serious cleavage of opinion between them is not very probable. There may be differences in shade, in the degree of emphasis. But they can be easily reconciled with each other. However, on an exceptional occasion it may happen that a Minister cannot really agree with the viewpoint of his colleagues or his colleagues find it impossible to tolerate his notions and behaviour. He has then to resign his office and withdraw from a Government with which he cannot be in harmony. If need be, he can be peremptorily asked to leave the Ministry.

§4. IMPORTANCE OF THE OFFICE OF PRIME MINISTER

The need for a president

Whenever a body consisting of more than one person is required to function, the need for some one to be its leader or president is self-evident. There must be someone to take the initiative in arranging business, to give rulings on occasions of disputes, to

co-ordinate Government activities, and to supply that unifying influence which keeps the administrative system out of contradictions and chaos. The absence of such a leader would be a great handicap to the smooth and effective working of the machinery of the state.

Self-abnegation of the monarch

With the growth of the idea of parliamentary government, the King's initiative and authority were naturally doomed. The monarch had to accept a self-denying ordinance and withdraw from active politics and administration in order to make room for the representatives of Parliament. This did not mean the weakening or the degeneration of the executive, but a fundamental change in its structure. The King's Ministers became in reality Parliament's Ministers, appointed, controlled and dismissed by that body. The King's place as their *de facto* master had to be appropriately filled by some one who was pre-eminent in parliamentary life and leadership.

Inevitable rise of the Prime Minister

The development of responsible institutions has been therefore invariably accompanied by the rise into prominence of a new dignitary called the Prime Minister. In England, the inevitability of his emergence was not realized at the beginning. Members of Parliament keenly resented what was wrongly believed to be an unauthorized usurpation of power by one single individual. But the logic of circumstances was overwhelming. No Government can operate and thrive without an active chief. The Prime Minister came to symbolize and personify the transition from monarchy to democracy, even when the institution of kingship was retained in its nominal majesty.

Chief Ministers in the Indian provinces

The inauguration of self-government in the Indian provinces and the formation of responsible Ministries in them must necessarily lead to the same development. Clause VII of the Instrument of Instructions to the Governor distinctly recognizes the existence of the leader of the largest political party in the legislature. It is advised that he should be invited to form the Cabinet. Emphasis is also laid on the need of fostering a sense of joint responsibility among the Ministers and on their being able collectively to command the confidence of the legislature. In March 1937, Governors did send for the leaders of the largest political party in the newly elected provincial legislatures—in six of them it was the Indian National Congress—and requested them to form

Ministries. Such persons are being designated in India as Chief Ministers and not Prime Ministers.

No analogy between conditions in Britain and in India

However, there is a very vital difference between conditions in Britain and in India. The British Sovereign has no place in the British Cabinet. He is precluded from attending its meetings or from attempting to influence or interfere with its working in any manner. His will cannot be imposed on any aspect of the administration. The Prime Minister of the country presides over the Cabinet, keeps himself acquainted with important transactions in every department, helps Ministers to arrive at decisions and, generally speaking, organizes and conducts the whole of the executive business. He serves as the chief connecting link between his colleagues and the Crown. All powers that are technically enjoyed by the latter are actually exercised by the Prime Minister who stands as the embodiment of the main current of popular opinion for the time being.

The meaning of constitutional monarchy

In strict legal theory, the King of England appears to be the mighty centre of all governmental authority. However, nowhere are appearances more deceptive than in this particular instance. In reality, the King cannot act in any matter or in any manner except in accordance with advice tendered to him by Ministers who are elected to Parliament and to power by the votes of the people. It is a famous maxim of the British constitution that the King can do no wrong, because he cannot do anything of his own accord at all. This obliteration of the King's personality from the domain of active government is the essential feature of what is known as constitutional monarchy. The strength and popularity of that institution in British polity is due, among other things, to the fact that it has been democratized and modernized.

Indian Governors are active rulers

As has been explained in the last section, Governors of Indian provinces are not intended to be mere constitutional or nominal heads. They have been deliberately entrusted with large powers to be exercised in their discretion or in their individual judgement, and of which they cannot divest themselves. And even in matters that are left to be disposed of by the Council of Ministers, the Governor will tend to become the chief directive agency. He is not only not excluded from the Council but actually presides over it and conducts its business. The Act has specifically provided that Ministers shall keep him informed of practically all impor-

tant matters in their respective departments. The subordinates of Ministers, namely the secretaries, who are heads of the secretariat staff, are required to wait upon Governors and to bring to their notice all those cases which in their opinion may affect subjects left to the discretion or to the individual judgement of the Governors. The bureaucratic subordinates of popular Ministers have thus a direct access to the head of the province, and an opportunity to create some prepossession in his mind. It is a mischievous constitutional anomaly which may breed very unhappy results.

Limitations to the position of the Chief Minister

The Chief Minister in the Indian provinces cannot have, in these circumstances, the same status and the same scope for self-expression which the Prime Minister has in Britain. He will be, of course, the chief spokesman of his colleagues, representing their cumulative will, aspirations and ambitions. But he will be also confronted with the Governor's personality, with his enormous influence and dominance. The association of a really capable and strong-minded Minister and a self-conscious Governor will prove to be like putting two sharp swords in the same sheath. They may clash against each other and require to be separated. It would be a highly spectacular and ominous conflict which will bring about an almost insoluble deadlock.

The necessity of giving him a free hand

Of the two partners in the Provincial Government, the Governor is superior in law, and the Chief Minister is superior in popular support and prestige. If autonomy and democracy in the provinces are to be real, the people's representative must be allowed by the Governor to have an entirely free hand in the work of governance. It has been declared, in response to the demands of Congress leaders, that legally and constitutionally speaking no such assurance of freedom can be given by the Governor. Then, the only alternative left for him is voluntarily to accept the healthy convention that he should refrain from exercising his ordinary or extraordinary powers in face of the opposition of his Ministers.

Limits to the voluntary action of the Governors

It would be, of course, quite unwarranted optimism to imagine, taking human nature as it is, that the manifestation of such an exceptional spirit of self-surrender on the part of the Governors could be a normal or universal phenomenon. It is very difficult to part with power, particularly when its exercise is intended to preserve and protect the interests of one's own countrymen. And even if some Governors on

some occasions are prepared to keep their authority dormant and unexercised, they may not be permitted to do so by the Governor-General and the Secretary of State who are their constitutional superiors.

§5. THE POSITION OF THE SERVICES

Control of the Secretary of State

The position of the Services in the scheme of provincial autonomy and also in the federal structure is very intriguing. The Act has laid down that appointments to the Indian Civil Service and the Indian Police Service are to be made by the Secretary of State and he can also make any other appointment whenever he thinks it necessary to do so. The rules and regulations for the recruitment of all such persons, for their salary, pensions, leave, dismissal, etc. are to be made by the same authority with the concurrence of the majority of his Advisers. It is one of the special responsibilities of the Governor and the Governor-General to safeguard all the rights and privileges of the Services, including their postings and promotions. The Ministers under whom these officers have to serve have no complete control over their subordinates and cannot punish them as they will for any infringement of orders.

Indifference or disobedience of the Services

There thus arises a very perplexing and unhappy situation. The head of the department may settle a policy and issue orders; the agency which has to carry them out may be quite lukewarm or even hostile to the proposals made by the head. Higher officials in the bureaucracy would be naturally conscious of the fact that their superiors, the Ministers, cannot affect their interests adversely or do them any harm. They may be therefore tempted, directly or indirectly, to sabotage a reform of which they disapprove, by hindering its proper execution. Such laxity or indiscipline on the part of subordinates is not directly punishable by the Minister. He must bring it to the notice of the Governor and try to get the guilty person properly reprimanded. It is obvious that this harnessing together of Ministers who cannot control their servants and servants who look upon their position with a feeling of distrust, uncertainty, and lack of enthusiasm is bound to prove extremely embarrassing to both parties.

CHAPTER XVII

THE PROVINCIAL LEGISLATURE

§1. INTRODUCTION OF THE BICAMERAL SYSTEM §2. TENURE OF THE CHAMBERS §3. COMPOSITION OF THE CHAMBERS §4. CONSTITUENCIES AND FRANCHISE §5. FUNCTIONS AND POWERS §6. CONFLICT BETWEEN THE CHAMBERS

§1. INTRODUCTION OF THE BICAMERAL SYSTEM

Introductory

THE origin of the legislative powers of the provinces goes back to the year 1807 when the Governors in Council of Madras and Bombay were given the power of making regulations for their respective areas. That power was taken away in 1833, and for a period of nearly thirty years all legislative authority for the whole of India was exclusively possessed by the Governor-General in Council. In 1861 the law-making power was restored to the provinces. Since then, a steady increase was brought about in the size, in the elected and non-official elements, and in the powers of the provincial Legislative Councils by the Acts of 1892, 1909 and 1919. Their position after the Montford Reforms has been explained in an earlier chapter. The changes introduced by the Act of 1935 and the shape given by them to the provincial legislature have now to be studied in detail.

Two chambers for certain provinces

The most important of these changes must be noticed at the outset. For the first time in Indian constitutional history, the bicameral principle has been introduced in the provincial sphere. It has been provided in section 60 of the Act that there will be two chambers in Bombay, Madras, Bengal, the United Provinces, Bihar, and Assam, and one in each of the remaining provinces. The upper chamber is to be known as the Legislative Council and the lower chamber as the Legislative Assembly.

Their harmful effects

The harmful consequences of this mischievous innovation cannot be overlooked. Even in a big unitary state, the utility of the bicameral system is highly questionable. Some eminent thinkers have gone to the length of saying that it is not indispensable even in a federation. Its deliberate introduction in the

smaller and simpler government of a province has no justification whatever. In fact, it is fraught with serious evil because it nullifies considerably the constitutional advance that is implied in the popularization of the lower chamber.

Their narrow constitution

The structure of the Legislative Councils, wherever they have been created, follows the usual lines of an oligarchical concentration. Their numbers are small. The franchise for their election is extremely high, and the constituencies which elect them are very narrow. They inevitably become the focus of all kinds of vested interests in the country. A house which is comprised mostly of big landlords, millionaires, merchant princes and impecunious fragments of a dilapidated aristocracy becomes an organized stronghold of intense conservatism and reaction.

Their undemocratic character

Such a second chamber not only duplicates the legislative process but complicates administration. If its powers are real and effective, it becomes an intolerable affront to democracy; if its objective is simply to postpone and to delay, it is too expensive and pedantic a mechanism to be maintained in a Provincial Government. It does not want to move except to hinder the movement of others by acting as a brake on their speed. Besides, in the environment of a conquered country, an oligarchical house automatically tends to become not only indifferent but even hostile to the country's political freedom.

§2. TENURE OF THE CHAMBERS

The upper chamber is permanent

Following the model of the federal upper chamber, namely the Council of State, the provincial Legislative Council is also made a permanent body, never liable to a wholesale dissolution. One-third of its members have to retire every three years and an individual member has a tenure of as many as nine years. This is of course an abnormally long period for any elective chamber. It is an essential feature of a democratic institution that the closest affinity should exist between the representative and his constituency.

Undesirable results

The currents of popular opinion are liable to frequent and profound change. Elections must be therefore held at short intervals in order to avoid a grievous divorce between the sentiments of the people and those of their chosen representatives. A member who, after election or nomination, is assured of his parlia-

mentary seat for the span of nearly a decade, has no incentive to keep himself thoroughly up to date in his knowledge of the ever-changing viewpoints of the public and to interpret them loyally and correctly. As the whole of the Legislative Council cannot be simultaneously dissolved at any time, it will always contain a substantial element which will be out of tune with contemporary thought and run counter to the will of the people.

Assembly has a tenure of five years

The tenure of the Legislative Assembly is five years. This may be considered to be a fairly reasonable period, neither too long for real democratic working nor too short for continuity and efficiency. An Assembly can be dissolved by the Governor earlier than the period of five years if circumstances demand that an important issue should be decided by the electorate. The ministerial executive may sometimes come into conflict with the legislature and may yet feel that the people are on its side. By dissolving the Assembly and holding fresh elections, the dispute is naturally submitted to the arbitrament of the people who are the final masters and judges.

§3. COMPOSITION OF THE CHAMBERS

Increase in numbers

The numerical strength of the legislative chambers in different provinces is given in the accompanying tables. It will be seen that the numbers of the Assembly show a considerable improvement over the limits prescribed by the Montford Reforms. In the old Bombay Legislative Council, for instance, there were only 67 elected members from the presidency proper, barring the Sind *bloc*. Now that number is 175. This increase in numbers is most welcome. It reduces the size of the constituencies and enables smaller units of population to have seats assigned to them. A living contact can be established between the voter and his representative if the size of the electorate is manageable.

Abolition of nominated and official members

Another reform introduced by the new Act is the elimination of the nominated and official elements from the legislature. They were great handicaps to the popular side. The solid array of votes invariably exhibited by them was merely the result of bureaucratic regimentation. Their numbers created false appearances because their votes were cast under executive command. A small remnant of this ridiculous system is still retained in the upper chambers both in the provinces

PROVINCIAL LEGISLATIVE COUNCILS

Table of Seats

Province	Total of seats	General seats	Mohammedan seats	European seats	Indian Christian seats	Seats to be filled by the Legislative Assembly	Seats to be filled by the Governor
Madras ...	Not less than 54 Not more than 56	35	7	1	3	...	Not less than 8 Not more than 10
Bombay ...	Not less than 29 Not more than 30	20	5	1	...	...	Not less than 3 Not more than 4
Bengal ...	Not less than 63 Not more than 65	10	17	3	...	27	Not less than 6 Not more than 8
United Provinces ...	Not less than 58 Not more than 60	34	17	1	...	...	Not less than 6 Not more than 8
Bihar ...	Not less than 29 Not more than 30	9	4	1	...	12	Not less than 3 Not more than 4
Assam ...	Not less than 21 Not more than 22	10	6	2	...	...	Not less than 3 Not more than 4

PROVINCIAL LEGISLATIVE ASSEMBLIES

Table of Seats

Province	Total seats	Total general seats	General seats reserved for scheduled castes	Seats for backward areas and tribes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Commerce, industry, mining, planting	Landholders' seats	University seats	Labour seats	Seats for women				
														General	Sikh	Mohammedan	Anglo-Indian	Indian Christian
Madras ...	215	146	30	1	...	28	2	3	8	6	6	1	6	6	...	1	...	1
Bombay ...	175	114	15	1	...	29	2	3	3	7	2	1	7	5	...	1	...	...
Bengal ...	250	78	30	...	...	117	3	11	2	19	5	2	8	2	...	2	1	...
United Provinces ...	228	140	20	...	...	64	1	2	2	3	6	1	3	4	...	2	...	...
Punjab ...	175	42	8	...	31	84	1	1	2	1	5	1	3	1	1	2	...	...
Bihar ...	152	86	15	7	...	39	1	2	1	4	4	1	3	3	...	1	...	...
Central Provinces & Berar	112	84	20	1	...	14	1	1	...	2	3	1	2	3	...	...	...	...
Assam ...	108	47	7	9	...	34	...	1	1	11	...	...	4	1	...	...	...	...
North-West Frontier Province ...	50	9	...	...	3	36	...	...	...	...	2	...	...	...	...	...	...	...
Orissa ...	60	44	6	5	...	4	...	...	1	1	2	...	1	2	...	...	...	...
Sind ...	60	18	...	...	...	33	...	2	...	2	2	...	1	1	...	1	...	...

and in the Federation. To that extent the constitution must be said to be defective.

The President and Speaker

The President of the Legislative Council is to be called President and that of the Legislative Assembly is to be called the Speaker. Both are to be elected and can be removed by the respective chambers themselves. This important privilege has been enjoyed by the Indian legislatures since the Montagu-Chelmsford Reforms.

§4. CONSTITUENCIES AND FRANCHISE

Constituencies

The province is divided into small territorial areas for electoral purposes. The district is generally taken as the unit because of the homogeneity it possesses and the facility for organization that it offers. Large cities are formed into groups by themselves. Non-territorial constituencies are formed for commerce and industry, landholders and other special interests. The three types of electorates that exist everywhere in India have been already explained at length in an earlier section.

Franchise for the Assembly

The following are the franchise qualifications for the Bombay Legislative Assembly :

An elector must be a British subject or the subject of an Indian state and at least twenty-one years of age. In a territorial constituency, he must have residence for at least 180 days in the previous year in a house within the constituency. The right to vote is given to (1) those who pay income-tax; (2) those who hold or occupy as tenants land assessed at Rs. 8 or more of land revenue; (3) those who are the alienees of the right of the Government to the payment of Rs. 8 or more rent or land revenue; (4) those who are *khots* or sharers in a *khoti* or *bhagdari* or *narwadari* village, responsible for the payment of Rs. 8 or more of land revenue; (5) those who occupy as owner or tenant a house of not less than Rs. 60 annual rental value in Bombay City or of the annual rental value of not less than Rs. 18 in any other city, or of the capital value of not less than Rs. 750; (6) those who have passed the matriculation or school-leaving certificate examination of the Bombay University; and (7) those who are retired, pensioned or discharged officers or soldiers of the army. These are general qualifications. A woman possessing them will be entitled to vote. She may also be so entitled if (1) she is a pensioned widow or mother of a person who was an officer or soldier in the army; (2) she is literate i.e. able to read and write in some

language selected by her; or (3) she is the wife of a person who pays not less than Rs. 36 as annual house rent or not less than Rs. 32 as land revenue.

Detailed qualifications are also mentioned for special constituencies. In the case of the universities, for instance, it is laid down that members of the senate or registered graduates of seven years' standing, having a place of residence in India, will get the vote. Membership of industrial and commercial bodies, trade or labour unions and the status as sardar or inamdar is the qualification for the franchise in constituencies specially formed to represent them.

Franchise for the Bombay Legislative Council

The following franchise qualifications are prescribed for the Bombay Legislative Council :

Voters must have been residents in the constituencies for a period of not less than 180 days in the previous financial year. The right to vote is given to (1) those who pay income-tax on an income of not less than Rs. 15,000 per year, (2) those who are sardars or sole talukdars or sole *khots* in respect of an entire village, (3) those who hold or occupy land as tenants which is assessed at Rs. 350 or more of land revenue, (4) those who hold titles, orders or decorations not lower than Khan Bahadur or Rao Bahadur, (5) those who are awarded a pension of not less than Rs. 250 per mensem, and (6) those who have been non-official members of any legislature in British India, or Executive Councillors or Ministers, or fellows of a university, or judges of the Federal Court or the High Courts, or mayors or sheriffs of Madras, Bombay and Calcutta, or non-official presidents of a municipality or a district local board, or the non-official chairmen of the Bombay Provincial Co-operative Bank or any Central Co-operative Bank. These are general qualifications. A woman possessing them will be entitled to vote. She may be also entitled if she is the wife of (1) a person paying income-tax on an annual income of not less than Rs. 30,000, (2) a sardar or talukdar or *khot* or a landholder paying not less than Rs. 2,000 as land revenue, or (3) a title-holder or pensioner as described above.

Disqualifications

The following persons are disqualified from being voters : (1) those who hold any office of profit under the Crown in India, except Ministers and such other officers as may be mentioned by an Act of the provincial legislature, (2) those who are of unsound mind, (3) those who are undischarged insolvents, (4) those who are guilty of election offences, and (5) those who are convicted

and sentenced to imprisonment for not less than two years; in this case the period of disqualification is to be five years or such less number of years as the Governor in his discretion may allow in a particular case.

A person can stand for election to more than one legislative chamber but he must sit as a member of only one of them. He must make his choice soon after the election results are published.

Percentage of enfranchised people

The franchise for the Legislative Assembly in every province is fairly low. It is of course much more restrictive than pure adult suffrage. Still, the payment of only Re. 1-8 as house rent per month or Rs. 8 as land revenue per year can in no way be described as a very high demand. Even when the requirements are so insignificant, the total enfranchised population throughout British India has been calculated to be in the neighbourhood of two millions and a quarter or only about 16 per cent of the British Indian population. Nothing can be more eloquent and painful evidence of the exceptionally poor standard of living and annual income of the average Indian.

§5. FUNCTIONS AND POWERS

Legislative powers

The powers and functions of the provincial legislature are to be understood in the three usual divisions of legislative, administrative and financial. It has to make laws for the province in respect of subjects enumerated in the Provincial Legislative List. It can also make laws for subjects mentioned in the Concurrent List. Certain limitations have been placed on these powers and have been already referred to in a previous chapter. A bill, other than a money bill, may originate in either chamber and requires the assent of both chambers for being passed into an Act, if a province has got the bicameral system.

Administrative

The legislature's powers over the provincial administration are to be exercised in the four ways which have been also described at length in Chapter X. It may (1) pass resolutions, (2) put questions and supplementary questions, (3) move adjournments, and (4) pass votes of no confidence against the Government. Detailed rules for the procedure and conduct of business have to be made by the provincial legislature. In provinces where those bodies have been already in session, that work has been under discussion.

Financial

The budget of the province for every financial year has to be placed before the chamber or chambers of the legislature. It will show separately that expenditure which is charged on the revenues of the province and is not votable by the Assembly and that expenditure which is votable by that body. However, the former can be thrown open by the Governor for discussion by the house. The votable expenditure has to be submitted to the Legislative Assembly in the form of demands for grants. That chamber has power to assent to, refuse, or reduce any such demand though the Governor can restore a cut if he thinks that it would affect the discharge of any of his special responsibilities.

§6. CONFLICT BETWEEN THE CHAMBERS

Occasions of disagreement

Where there are two legislative chambers with co-ordinate powers, there is a possibility of a serious disagreement between them. A bill passed by one chamber may not be acceptable to the other. It may propose certain amendments which the originating chamber is not prepared to endorse. The constitution lays down that no bill can become an Act unless it is passed by both chambers of the legislature. The question then arises as to whether the bill in dispute should be dropped altogether or whether some method should be found to overcome the deadlock. To allow the 'Noes' to carry the day on all occasions would be hardly fair to the bigger and more popular chamber. A more constructive remedy is therefore required.

Joint sitting

Section 74 of the Act of 1935 lays down that if a bill passed by the Legislative Assembly is not passed by the Legislative Council within twelve months of its receiving the bill, the Governor may summon the chambers to meet in a joint sitting for the purpose of deliberating and voting on the bill. In such a meeting the vote of the majority of members present will finally decide the issue. No new amendments can be suggested at this stage. The Governor may summon a joint sitting even before the period of twelve months is over if he feels that the bill under discussion relates to finance or affects any of his special responsibilities.

The president of the upper chamber will preside over a joint sitting. Rules as to procedure are to be made by the Governor in consultation with the President of the Council and the Speaker of the Assembly.

CHAPTER XVIII

THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

§1. THE LEGISLATURE'S CONTROL OVER THE MINISTERS §2. CONTROL OVER FINANCE AND LEGISLATION §3. CONTROL OVER THE SERVICES §4. CONCLUSION

§1. THE LEGISLATURE'S CONTROL OVER THE MINISTERS

Parliamentary practice

IT is one of the most vital characteristics of parliamentary government that the executive is completely subordinate to the legislature. In England, for instance, the House of Commons is all in all. The British Cabinet is entirely the servant of the British Parliament, brought into office because of the support of its majority, and deposed from power as a result of the expression or indication of its displeasure. The British democracy is reflected in the British Parliament. Through the instrumentality of that legislative body, it exercises its ultimate and unlimited sovereignty.

The legislature's powers in the scheme of provincial autonomy

If India's political progress is to lie along democratic and parliamentary lines, the Indian legislatures must be placed in the same position of unquestioned supremacy. The claim has been repeatedly made for the Act of 1935 that it has established full provincial autonomy. It would therefore follow that all political authority in the province is now vested in its legislature. How far does such a state of things exist in actual practice? To what extent does the provincial legislature control taxation, expenditure, and the executive actions of Ministers?

Appointment of ministers made in effect by the legislature

The Act has laid down that the appointment of Ministers has to be made by the Governor. But it is a necessary condition that they must be members of the provincial legislature. The Governor is further instructed to endeavour to select them in such a manner that they are able collectively to enjoy the confidence of that popularly elected body. These are significant provisions. Their inevitable result, in normal circumstances, would be that the Ministers are appointed, in

effect, by the legislature which is really the nation in miniature for the time being.

The verdict of the electorate must be respected

The recognized leaders and prominent members of different political parties contest the elections. They vigorously put forward their policies and programmes. The voters who are to make the final choice would be naturally persuaded to support that candidate and that party whose views and general outlook appeal to them. A leader who has the overwhelming backing of the electorate is in an extremely formidable position. No sensible Governor can afford to ignore him or to set him aside. To do so would be to precipitate a first-class political crisis which may only end in a not very creditable climb-down on the part of the indiscreet Governor.

Ministers' salaries are non-votable

The salaries of Ministers, though fixed by the legislature, are not annually voted by it in respect of individual Ministers. They are charged on the revenues of the province and are included in the non-votable list. It may be feared that this restriction strengthens the position of the Ministers and correspondingly weakens that of the legislature, because the withholding of salaries has ceased to be a weapon in the hands of the latter. However, it will not make much difference in actual practice.

Refusal of supplies and motions of no confidence

A large portion of the expenditure on ministerial departments has been made subject to the sanction of the legislature. That body may refuse to sanction any amount if it disapproves of the conduct of Ministers and desires that they should resign. Such a refusal of supplies is bound to have an immediate effect. In fact, the legislature is allowed to adopt an even more direct method of telling Ministers that they are not wanted. It can pass a definite motion of no confidence in them and thus command that they should leave their office. In the face of such a straight attack, no Ministry can survive: Not even the Governor, with all his sympathies, can hope to save it from dismissal.

It may be therefore conceded that the Ministers' position of subordination to the legislature is clearly accepted in the new constitution. This does not, however, apply to abnormal and extraordinary occasions, as for example, when the majority party in the legislature refuses to form a Ministry and also does not allow others from the minority groups to form one.

§2. CONTROL OVER FINANCE AND LEGISLATION

Non-votable items in the provincial budget

The real difficulties of the legislature do not arise on account of its inadequate control over the Ministers, but on account of serious deductions made in its own powers in several ways. All the expenditure of the Provincial Government is not left to be determined and regulated by the legislature's will. The budget is divided into parts consisting of votable and non-votable items. The latter are deliberately kept beyond the authority of the elected representatives of the people, though a barren discussion on them may be permitted. The proportion of non-votable to total expenditure will be easily in the neighbourhood of 50 per cent and perhaps even more. This means a considerable watering down of the very concept of provincial autonomy.

Power of restoring cuts

Even in regard to items that are votable, the dictation of the legislature is not final. It may choose to make cuts in the amounts demanded by the Ministers. But if the Governor is satisfied that any such cut is likely to affect any of his special responsibilities, he can restore it, wholly or partly, in his own discretion. The creation of such an extraordinary veto is thoroughly incompatible with a genuine transfer of power to the people of the province. Its exercise will naturally prove to be irritating, because it will be tantamount to a deliberate and legalized defiance of popular opinion.

Power of enacting Governor's Acts

In matters of legislation also a similar exceptional provision has been made. All laws required for the province have to be placed before the legislature for consideration and enactment. This is quite in keeping with the democratic principle. Laws which concern all and have to be obeyed by all ought, in the fitness of things, to be decided by all. However, the constitution has further provided that the Governor, acting alone and in his own individual capacity, may enact any law which he thinks it necessary to enact. There may not be even the pretence of a consultation between him and the legislature or an attempt on his part to bring them round to his views. Such Governors' Acts, passed as they are by the single head of the executive in his own autocratic judgement, would be irrefutable and disgraceful evidence of the limitations on provincial autonomy imposed by the Act of 1935.

§3. CONTROL OVER THE SERVICES

The political executive

Ministers constitute what may be described as the political executive of the state. They are expected to be men of versatile talent and of broad vision. Their chief duty is to think in terms of ideals and formulate far-seeing policies. It has been already explained, that in the structure of provincial autonomy, Ministers are made fully responsible to the legislature of the province.

The administration

There is another constituent of the executive which supplements and completes the work of Ministers. It is composed of the Civil Service and is known as the administration. Its duty is to carry out the plans and projects of parliamentary leaders and give them a concrete shape. That is a responsible and difficult task and can only be accomplished by really competent men.

Control of the legislature

The position of such a public service in a democratic state is peculiar. The public services are of course entirely under the control of the people, who act through their elected representatives in the legislature. The latter body prescribes rules and regulations which determine their salaries, promotions, leaves, pensions, etc. Yet, a democracy is also a Government. Its servants have a very important mission to fulfil. They are not required to take their orders from the man in the street, nor are they liable to be chastised and dismissed by him.

Importance of the public Services

The public services are established for satisfying some of the most primary needs of organized human society. They have an enormous utility *per se*. The efficient performance of administrative functions requires a good deal of intellectual aptitude and training. Recruitment to the Services is therefore made by an open competitive examination, held by persons of the highest attainments and integrity. Thereby the poison of nepotism is eliminated, and persons of the right calibre are selected. Security of tenure during good behaviour is assured to every servant. The prospects of his advancement are not decided by political considerations but only on the strength of ability.

In short, the bureaucracy represents a trained body of professional experts, whose knowledge and experience are of the highest benefit to the country. They are treated with

great deference and respect even by their superiors, the Ministers. All the same, it must be clearly understood that the experts are not the masters. They are merely useful advisers and servants of the state. Their opinions would be certainly invited and carefully considered before the formulation of policies. But they are not binding. It is the popular Minister who takes the final decision. The politician supersedes the administrator. The specialist has to adjust himself to the will of the sovereign and readily place all his technical skill at his service.

Their position as experts and servants

As long as the character of the Indian Government was entirely bureaucratic, officers in the Indian Civil Service had to perform both political and administrative functions. They decided policies and also carried them out. The Minister and the bureaucrat were combined in the same person. The grant of self-government to India introduces a fundamental alteration in this privileged status. In proportion as political power is transferred to the Indian people, the Services must inevitably recede into the background. The Ministers and the legislature will determine the purposes for which the machinery of the state should be utilized, and the bureaucracy will have to carry out their wishes with efficiency and loyalty.

Double role of the I.C.S.

That the Services must be kept perfectly immune from the capricious influences of party politics, that it would be disastrous to allow them to be made the sport of party feuds and manoeuvres, is obvious. Interference by politicians in purely administrative detail demoralizes both administration and politics. A democracy which is tempted to corruption is definitely on the road to ruin. The traditions of a high standard of purity, discipline, efficiency, detachment and self-effacement, which are such noble assets of the British Civil Service would have to be developed in this country also.

Freedom from political influence

But this does not mean that India's superior services should be legally kept beyond the authority of the Indian nation. That kind of independence conferred on them would be thoroughly inconsistent with the reality of India's political freedom. The Act of 1935 contains a whole chapter devoted to an enumeration of the special privileges guaranteed to the superior Services. Their appointment is to be made by

Special privileges conferred by the Act of 1935

the Secretary of State even though they have to work under Ministers. Their salaries, promotions, leave, pensions, etc. are also fixed by the Secretary of State and not by the Indian legislatures though they have to bear the financial burden. Certain important posts are reserved for members of the I.C.S. No disciplinary action can be taken against these exalted subordinates by their popular superiors, namely the Ministers. The control of the legislature over this portion of the executive is thus substantially minimized. It is of course a grave drawback on provincial autonomy.

§4. CONCLUSION

An apparent change for the better

There was very severe criticism of the Montford Reforms because public opinion considered them to be extremely inadequate. The Act of 1935 is supposed to go much further than the older measure; particularly in the provincial sphere. The clumsy and detestable structure of dyarchy has been abolished. The whole administrative machinery of the province is now entrusted in the hands of Ministers who are responsible to and removable by a popularly elected legislature. In appearance, at least, all these changes indicate a remarkable degree of political advance as compared with conditions in the past.

Many restrictions and safeguards

Unfortunately, the impression conveyed by such a broad, simplified outline is not the whole truth, and is therefore positively misleading. It ignores those important provisions of the Act which are intended to operate as a vigorous negative force. In fact, the new constitution represents an admirably ingenious blend of plus and minus, of addition and subtraction, of progress and regress. The hand that gives has been blessed with the invariable companionship of the hand that takes away. To what extent the two forces working in opposite directions actually cancel each other and what exactly is the nature and size of the final remainder can be only revealed by experience.

Experience alone will be the test

The all-pervading special responsibilities of the Governor and the Governor-General and the numerous reservations and safeguards affecting some of the most vital aspects of the administration will be dark and disconcerting spectres, constantly lurking in the background of the constitutional picture. They may suddenly emerge at any moment and overwhelm the normal political routine. It has been said that the Act of 1935 does not introduce in the provinces a system of limited

monarchy but a system of limited Ministry. The Governor, like the British monarch, is not expected to retire into a sublimated obscurity. His personality will be an active force. His will may come to be frequently pitted against the will of the electorate. How such conflicts will end, to what extent the people will be able to have their own way, are questions which can be answered only by time.

PART V

GENERAL

CHAPTER XIX

SUB-DIVISIONS OF THE PROVINCE AND THEIR ADMINISTRATION

Divisions of a province

It is proposed to give here a short description in outline of the system of administration in the province as apart from the controlling organization at the headquarters. An Indian province comprises a vast area, very often as big as the area of some of the larger countries of Europe. It would be therefore physically impossible to conduct its administrative business without further sub-dividing the area into smaller units and distributing Government authority amongst smaller officers, with a supervising agency above. There is a great diversity in the conditions of the provinces. There is also some variety in the scheme of decentralization of authority within the provincial area itself. However, the district is the unit common to all provinces.

The division

Intermediate between the district and the whole province there may be groups of districts known as divisions, in charge of officers known as commissioners. Such officers, for instance, exist in Bombay. In most of the provinces, though not in Bombay, there is what is known as a Board of Revenue at the headquarters. It is the chief revenue authority of the province, and in its judicial capacity it forms an appellate court in rent cases, and serves to increase the volume of revenue.

The commissioner

The duties of the commissioner of a division in a province like Bombay, where such officers are appointed, are those of general superintendence over a group of five or six districts included in the division and also of acting as a court of appeal in revenue cases. The commissioner is a senior officer of the Indian Civil Service, and has been described as serving as a post office between his subordinates, the collectors, on the one hand, and his superiors, the Government at the headquarters, on the other.

The district

The district, however, is invariably the unit of administration in all provinces and is therefore of vital importance. In size the district varies from province to province and even from district to district in the

same province. Its area varies from two to ten thousand square miles, and its population from one to three million souls. Its average size is given as 4,430 square miles in the Montford Report. Some of the bigger districts exceed the population of Switzerland, or the area and population of Denmark. The officer in charge of the district is known as the collector.

The collector

The collector is the representative of the British Government in the district and represents the concentrated authority of British rule. He has the dual capacity of collector and magistrate. As collector, he is the head of the revenue organization in the district. As magistrate, he exercises general supervision over the criminal courts and directs the police work. He can get in touch with every inch of territory in the district through his subordinates, the mamlatdars and the village officials. He maintains peace in the district area.

Collectors and their staff are officers intimately known to the people as they come into constant contact with them for a hundred reasons and are the vehicles conveying the orders of the Government to the people at large. During a large part of the year, the collector has to go out to the different parts of his district, supervising the work of his subordinates and getting himself acquainted with the people and the problems of administration. He is the eyes, the ears, the mouth and the hand of the Government within his district and serves as their general representative to the remotest borders of the country.

Varied nature of his duties

The organization of the collectorate is 'so close knit, so well established, and so thoroughly understood that it simultaneously discharges an immense number of other duties with ease and efficiency. Registration, alteration and partition of holdings, management of indebted estates, loans to agriculturists, settlement of disputes, and above all, famine relief, are matters which are dealt with by this agency.' The collector is a 'strongly individualized worker in every department of rural economy'. As Sir John Strachey says, because he is the representative of a paternal, not constitutional Government, he has to perform a large number of functions connected with a variety of departments like police, jails, municipalities, roads, education, sanitation, dispensaries, local taxation, and so on. 'He should be a lawyer, an accountant, a financier, a ready writer of state papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering.' He is

directed to keep himself informed of and to watch everything that happens in the district, 'The vicissitudes of trade, the state of currency, the administration of civil justice, the progress of public works' must engage his attention as much as the protection of life and property and the maintenance of peace.

Importance of his office

In short, the collector of the district is the most important officer in the bureaucracy of India because of the first-hand personal knowledge that he has the opportunity to acquire about the people and problems of his district. He is in the closest possible touch with realities. A large measure of local independence and initiative is enjoyed by him. On his resource, efficiency and presence of mind depends the smooth course of administration. Officers trained as collectors in the various districts of the presidency and who have therefore acquired the most valuable personal experience and information of the strange country with the government of which they are entrusted, are raised to the offices of commissioners and Executive Councillors and some to those of provincial Governors.

Other officers

The chief town of the district is the collector's headquarters. Here are stationed the heads and offices of various specialized departments which have to function within the area of the district. Establishments for irrigation, roads and buildings, agriculture, industries, factories, co-operative credit, and medical relief always exist with their heads in most of the districts to perform the special functions assigned to them. The executive engineer, the civil surgeon, the district superintendent of police, the assistant registrar of co-operative societies, the district judge, are all officers who respectively are the heads of their departments in the territorial jurisdiction of the district. They are controlled by their own departmental superiors and not by the collector. They have been compared to different sets of strings connecting the Government with the people. Their policies are influenced in varying degrees by the district officer. He is always there in the background 'to lend his support or, if need be, to mediate between a specialized service and the people'.

Deputy collectors and mamlatdars

The district is further split up into smaller divisions. These sub-divisions are under the junior officers of the Indian Civil Service or members of the Provincial Service styled deputy collectors. The general revenue and magisterial charge of the sub-division is vested in the sub-divisional officer, subject

to the control of the collector. Arrangements within the division vary in the different provinces. In Bombay, the district is sub-divided into talukas, each of which has as its head an officer known as the mamlatdar. He is to the taluka what the collector is to the district, though in a diminutive measure. He has revenue and magisterial powers and has to supervise the working of the administration within his area. He has also numbers of other diverse duties. In fact, he is practically the general administrative officer of the Government in the area given to his care, namely the taluka.

Village officials

Lastly, at the basis of the system, comes the Indian village with its organization of great antiquity still finding a place in the new system with certain necessary modifications. The headman is the chief officer in the village and is responsible for the collection of revenue and the maintenance of peace. He has the assistance of a village accountant who keeps the village accounts, registers of holdings and, in general, all records of land revenue. The village watchman is the rural policeman. Most of these officers were formerly hereditary and continued to be so till recently. The tendency, however, of modern times is to abolish the principle of heredity and substitute a competitive test. The hereditary character of the kulkarni's or accountant's post has already disappeared, and perhaps other posts may follow suit.

CHAPTER XX

LOCAL SELF-GOVERNMENT

§1. HISTORICAL. §2. FUNCTIONS AND SOURCES OF INCOME

§1. HISTORICAL

MUNICIPALITIES and local boards in India are the creations of British rule. The presidency towns had municipal government from the early days of the Company. A Municipal Corporation was established in Madras as far back as 1687. The charter of 1726 constituted mayor's courts in Bombay, Madras and Calcutta. They were judicial rather than administrative bodies. The Regulating Act indirectly allowed the authority of levying taxation for local purposes. Several later statutes modified the municipal constitutions of the three towns.

History of municipalities

Two Acts of universal application were passed by the Governor-General's Legislative Council in 1850 and 1856. They had reference to municipal government outside the presidency towns. It was not, however, until 1870 that any progress was made. In that year, Lord Mayo's Government admitted the necessity of taking steps to bring local interest and authority to bear on the management of funds which were devoted to local purposes.

But it is with Lord Ripon's name that the establishment of local self-government in liberal measure is associated. In 1883-4, Acts were passed which greatly altered the constitution, powers and functions of municipal bodies. The elective system was widely extended, and many towns were permitted to elect a private citizen as chairman. Arrangements were also made to increase municipal resources. Some items of provincial revenue which were capable of better management under local authorities were transferred to them, with a proportionate amount of provincial expenditure incurred for local objects.

Lord Ripon's reforms

Lord Ripon declared the main object of his reform to be 'to advance and promote the political and popular education of the people and to induce the best and the most intelligent men in the community to come forward and take a share in the management of their own local affairs, and to guide and train them in the attainment of that important object'. It was merely carrying out

His object

the policy of decentralization initiated by Lord Mayo with reference to finance. According to Lord Ripon this was decentralization as between the Provincial Governments and local bodies.

History of local boards

Local boards are bodies which look after local affairs in rural areas. Their establishment is comparatively recent. No local boards existed up to 1870. As a result of the financial decentralization scheme introduced by Lord Mayo in that year, various Acts were passed in different provinces providing for the levy of rates, and for the constitution of local bodies to administer the funds raised by them. Lord Ripon's Government reorganized the whole system. Boards were established all over the country. The lowest administrative unit was to be small enough to secure local knowledge and interest. The district boards looked after the measures that were common to all the district. The non-official element was to preponderate in the composition of the boards and to a certain extent the principle of election was recognized. The financial resources and responsibilities of the boards were increased. Some portion of provincial revenue and expenditure was transferred to them. There was no uniform or general system of local self-government imposed on all the provinces by the Government of India. A large discretion was left to Provincial Governments.

The Resolution of 1918

In 1918 the Government of India issued an important resolution. It affirmed the necessity of removing all unnecessary official control and of distinguishing between the spheres of action appropriate for the Provincial Government and the local boards. It was proposed to make these bodies as representative as possible. Unnecessary restrictions in connexion with taxation, the budget, and the sanction of works were to be removed. A substantial elective majority both in municipalities and rural boards was recommended. It was also thought desirable to keep the franchise as low as possible. Chairmen of the boards, instead of being nominated by the Government, were recommended to be elected by the boards.

After the Montford Reforms

After the introduction of the Montford Reforms, local self-government became a transferred subject. Almost every Provincial Government displayed their interest and zeal for the progress of local institutions. Acts were passed in the Punjab providing for the creation of improvement trusts and village councils. In the United Provinces, the District Boards Bill

was passed in 1922, democratizing the local boards and increasing their powers of taxation. Similar measures were taken for municipalities. The Bihar and Orissa Legislative Council passed important Acts having the same effect. So did the legislatures of the Central Provinces and Assam. The Bengal Council passed the Village Self-government Act and also other Acts for reconstituting the Calcutta Municipality and other municipalities in the presidency. In Bombay, a bill relating to local boards was passed by the Legislative Council. It extended the franchise, removed the sex-disqualifications and gave increased powers to local boards; constituting in short a very liberal and progressive piece of legislation.

Village panchayats

The village has been the primary territorial unit of Government organization in India. Ninety per cent of the Indian people live in villages. Through all the vicissitudes of India's political life, the village has maintained its existence intact. It has served to conserve the vitality of the Indian nation. The administration in villages was conducted in ancient times through what were known as village panchayats. Recently, endeavours have been made to revive the withering system. The municipalities and local boards in India constituted under British rule have no connexion with the indigenous village system. They were entirely the creations of a series of Acts. After 1919, the Legislative Councils in some of the provinces, including Bombay, passed Village Panchayats Acts in order to renovate the old institutions and modify them to suit present conditions.

§2. FUNCTIONS AND SOURCES OF INCOME

Functions—obligatory

The functions of local institutions like municipalities and rural boards are divided into two classes, obligatory and discretionary. In the former category come the duties of lighting public streets and places; watering public streets and places; cleansing public streets and places; removing noxious vegetation; extinguishing fires; regulating or abating offensive or dangerous trades, acquiring and maintaining places for the disposal of the dead; constructing, altering and maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, tanks, wells, etc.; obtaining supply of water registering births and deaths; public vaccination; establishing and maintaining public hospitals and dispensaries; establishing and maintaining primary schools, etc.

Discretionary

Among the discretionary functions may be mentioned the laying out of public streets; constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, rest houses, dharmsalas and other public buildings; taking a census; making a survey; payment of salaries and other monetary charges incidental to the maintenance of any court of a stipendiary or honorary magistrate; maintaining a farm or factory for the disposal of the sewage, and any other 'measure 'likely to promote public safety, health, convenience or education. The functions of local boards are, of course, mainly concerned with objects of rural importance and rural necessity.

The need for local self-government

The enumeration of the above list will make it clear that municipalities or rural boards are entrusted with duties which can best be performed by local bodies. Local self-government is, in fact, a process of political devolution. The principle which underlies it involves the conception of local autonomy. Both in the larger interests of the state and in the narrower interests of the local area and its population, the delegation of powers and freedom to local bodies is considered to be desirable. It secures efficiency and economy of administration. What is more important, it has an excellent educative effect, inasmuch as it supplies a training ground for politicians and public workers. The consciousness of liberty and the sense of responsibility and personal interest in the management of administrative affairs are moral influences in themselves.

The position in Bombay

In Bombay, the policy of freeing municipalities from external control has been carried out to a very great extent. All municipalities now elect their own presidents; the number of nominated members is reduced in each case to one-fifth of the total number. The qualifications for electors are based on a wide franchise. There are in all 33 city municipalities and 123 town municipalities in the presidency. They appoint chief officers, health officers, engineers and other executive officials. Services of public utility such as roads, dispensaries, water supply, sanitation and education are rendered by them.

It will be observed that district boards are not called upon to perform exactly the same duties as municipalities in cities, though on the whole the nature of the two duties is the same. The district board looks after the rural area of the district; the municipality is concerned with the urban limits of the city. The needs of the two may be slightly

different; for instance the maintenance of public roads for keeping communications between village and village may be a more onerous duty for a district board than the maintenance of streets in the city. Still, after allowing for the variation in the importance of particular items, the functions of municipalities and district boards are almost the same.

Sources of income

In order to enable them to incur the expenditure that would be involved in the performance of their duties, powers of earning an income by means of taxation and fees must be allowed to local bodies. Taxes would be levied upon and fees collected from specific areas demarcated as belonging to the municipality or the local board. Their jurisdiction is precisely defined. The kinds of taxes which local bodies can impose are as follows: (1) a rate on buildings or lands or both, (2) a tax on vehicles, (3) an octroi duty on goods or animals or both; (4) a tax on dogs, (5) a sanitary cess on private latrines, etc., (6) a water rate for the water supplied by the municipality or local board, (7) a lighting tax, (8) a tax on pilgrims, (9) a tax upon arts, professions, trades, etc., (10) a tax upon drainage, sewage, conservancy, and so on.

In the case of local boards, the most important source of income is the cess upon land. It is now collected at the rate of two annas in the rupee along with land revenue. Most sources of income that are available in a populated city are not available in rural areas and villages, and therefore a special source of income has to be devised for them. The imposition of local rates upon lands for local purposes is the most satisfactory method of giving income to the district boards. The rates are collected by the same agency which collects land revenue for the Government, and the district boards are not required to spend any large amount of money for the machinery of collection.

Taluka boards.

Below the district board are taluka boards. To them are delegated certain functions which are of importance and interest to the taluka and which can be best disposed of by them. Below the taluka boards come the village panchayats whose jurisdiction is strictly limited to the area of the village. The important body is, however, the central district board. Its constitution is now largely democratized. It contains an elected non-official majority and elects its own president. The franchise for its election is low. Representatives of taluka boards and village panchayats in the district are given seats on it. By recent legislation in the Bombay Presidency, the administration of

compulsory primary education in the district areas is entrusted to the district boards.

General body and executive officials

The elected and nominated members of a municipality or a local board together form what is known as its general body. This body elects the president and the vice-president and various sub-committees and holds frequent meetings for the transaction of business. It passes by-laws, votes expenditure and raises money by taxation and loans. It also appoints executive officials for carrying on actual administration. The chief officer, the health officer, the engineer, the administrative officer of the school board are all paid servants controlled by the municipality or the local board.

CHAPTER XXI

JUDICIAL ADMINISTRATION

§1. THE FEDERAL COURT §2. ORGANIZATION IN THE PROVINCES §3. POSITION OF EUROPEAN SUBJECTS §4. THE SEPARATION OF THE EXECUTIVE FROM THE JUDICIARY

§1. THE FEDERAL COURT

THE judicature forms an integral part of the organization of a state. It interprets the law and sees that it is properly applied. It serves as the powerful guardian of the civic liberties and privileges of individual citizens and prevents encroachments on them from any quarter, including the officials of the Government. It is of the utmost importance that the judges should be independent, incorruptible and fearless. Otherwise, they would not be able to discharge their duties with dignity and scrupulous impartiality.

The functions of a court

In a federal constitution, the supreme court of justice has a special mission. It stands as the final arbiter in disputes between the federating units or between them and the Central Government. The verdict that it pronounces is binding on all. It is the duty of this court to interpret the language of the constitution whenever it is felt to be ambiguous or vague. Unlike courts of justice in a unitary state, the Federal Court can sit in judgement even upon Acts passed by the central or provincial legislatures, so far as the legality of their jurisdiction is concerned. For example, the Federal Court of the U.S.A. recently decided that some important Acts, passed by the Congress in furtherance of the national recovery plan were *ultra vires* and therefore null and void.

Importance of the Federal Court

The Act of 1935 has provided for the creation of the Federal Court of India. Its constitution and powers have been elaborately prescribed in sections 200-18. The court will actually come into existence and begin to function from October 1937. The names of its judges, who are to be three in number, including the Chief Justice, have been already announced.

The Federal Court of India

The Federal Court, according to the Act, is to consist of a Chief Justice and not more than six puisne judges. Every

one of them is to be appointed by His Majesty and can hold office until he attains the age of sixty-five. A judge is of course free to resign his post and may be removed from office by His Majesty on the ground of misbehaviour or infirmity of mind or body if the Privy Council reports to that effect.

Its constitution

A person is not qualified to be a judge of the Federal Court unless he (1) has been for at least five years a High Court judge in British India or in a federated state, or (2) is a barrister or advocate of at least ten years' standing, or (3) has been for at least ten years a pleader of a High Court in British India or in a federated state. The Chief Justice must be a barrister or an advocate of at least fifteen years' standing. Their salaries and allowances are to be fixed by His Majesty in Council.

Qualifications of judges

The Federal Court has exclusive original jurisdiction in any dispute between any two or more of the following parties, that is, the Federation, any of the provinces, or any of the federated states, in so far as the dispute involves any question about legal rights.

Original jurisdiction

An appeal will lie to the Federal Court from the judgement of a High Court in British India if the latter certifies that the case involves a substantial question of law as to the interpretation of the Act of 1935 or any Order in Council made thereunder.

Appellate jurisdiction

The federal legislature may provide that in certain civil cases where the amount involved in the dispute is not less than Rs. 50,000, an appeal will lie to the Federal Court from the judgement of a High Court in British India. Direct appeals to the Privy Council in such cases may then be abolished.

An appeal may be made to the Privy Council against any judgement of the Federal Court given in the exercise of its original jurisdiction; and in any other case by leave of the Federal Court or of the Privy Council.

§2. ORGANIZATION IN THE PROVINCES

(*a*) *The High Courts*

At the head of the judicial organization in the provinces stand the Indian High Courts. These are bodies composed of the Chief Justice and other judges, the maximum total number in each being fixed at twenty. They are appointed by His Majesty. The Governor-General in Council may appoint additional

The High Courts—composition

judges having the same status and powers, for a period of not more than two years. The judges must be either barristers of England and Ireland or advocates of Scotland of not less than five years' standing, or members of the Indian Civil Service of not less than ten years' service, or officials in judicial service of a grade not less than the grade of a subordinate judge of at least five years' service, or pleaders of an Indian High Court of not less than ten years' standing. At least one-third of the total number must be barristers or advocates, and another third must be Indian Civil Servants. Every judge can hold office until he attains the age of sixty years.

Jurisdiction

The jurisdiction of the High Courts is extremely wide, comprising as it does both original and appellate authority, including admiralty jurisdiction in case of offences committed on the high seas. They have all powers in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practices of the court. They have to superintend the working of all courts subject to their appellate jurisdiction, and may for that purpose call for returns or direct the transfer of any case from one court to another and prescribe the rules of practice, and proceedings, and forms in which book entries and accounts should be kept by them.

Powers

The High Courts have both original and appellate jurisdiction in civil as well as in criminal matters. They function as original courts for the presidency towns in civil cases in which the amount of money involved exceeds Rs. 2,000 and in criminal cases when these are committed to them by the Presidency Magistrates. As appellate courts they hear appeals both in civil and criminal matters from all places in the area under their jurisdiction, entertaining appeals also from their own original sides. The High Court judges being directly appointed by His Majesty to hold office during his pleasure, and their salary being fixed under law, that degree of independence which is required in the highest tribunal is secured to them to a great extent.

There is a separate court known as the Court of the Judicial Commissioner in Sind. The High Court of Bombay has no jurisdiction over that province. The Judicial Commissioner's Court is the highest court of appeal in the province and is also the District and Sessions Court of Karachi. Since September 1923 criminal jurisdiction over European

British subjects in Sind is vested in it, as also that in matrimonial suits.

(b) *The Criminal Courts in the District*

Below the High Court there are subordinate courts for the disposal of civil and criminal business. To speak of the criminal courts first. Every province is divided into sessions—divisions which are usually identical with the area of the district. For every such division, the local Government must establish a sessions court and appoint a sessions judge or additional sessions judges. These sessions courts function in their prescribed territorial jurisdiction. They are competent to try all criminal cases committed to them and to inflict any punishment authorized by law. Every sentence of death passed by them is, however, subject to confirmation by the highest court of criminal appeal in the province. The sessions court is also a court of appeal against the decision of the magistrates subordinate to its jurisdiction.

Sessions courts

Below the sessions court are courts of magistrates. These are divided into three classes. The first class court has power to pass a sentence of two years' rigorous imprisonment and a fine of an amount up to Rs. 1,000. The second class court can pass a sentence of six months' rigorous imprisonment and a fine of an amount up to Rs. 200. The third class court can pass a sentence of one month's imprisonment and a fine of an amount up to Rs. 50. Territorial limits are assigned to the magistrates and a detailed schedule set out showing the grade of magistrates competent to try various criminal cases. They have power to commit to sessions courts those cases which are out of their competence.

Magistrates, first, second and third class

In each district, the collector, or the deputy commissioner in the non-regulation provinces, is appointed district magistrate and in this capacity supervises the work of other magistrates in the district. He distributes work among them. In the presidency towns there are presidency magistrates and in big cities, city magistrates, to dispose of criminal cases and to commit the more important ones to the High Court or to the sessions.

District and presidency magistrates

Provision is also made for the appointment of honorary magistrates in big towns. Gentlemen of good social status desirous of doing public work are usually selected to fill the appointments. They always work as a bench. They are divided into three grades

Honorary magistrates

of first, second and third class, and have the same powers as stipendiary magistrates in the respective grades.

Jury and assessors

Trial by jury in criminal cases is one of the most cherished privileges in a country like England. It has been acquired after a good deal of constitutional struggle. To the political thinker, the existence of such a privilege may or may not appear to be an unqualified guarantee of the impartial carrying out of justice. To some, it might positively appear to have large elements of imperfection which are bound to detract from the scientific and correct character of the verdicts given. The transaction of complicated judicial business by avowed amateurs, depending upon the help of their common sense to discharge their duties, may not evoke enthusiasm in the mind of a critical theorist. But apart from the theory of the question, a description of the jury system as introduced in India is interesting.

Trial by jury is the rule in the original criminal cases before the High Courts. In the mofussil it is not considered always possible to empanel an efficient jury. Trials, therefore, are conducted either with the help of a jury or with the help of assessors. The difference between jurors and assessors is well known. The verdict of the former is binding upon the judge, who rarely differs from them. The opinion of the assessors, on the other hand, is not binding and their advice may or may not be accepted by the trying judge. Where it appears to the sessions judge that the verdict of the jury is manifestly absurd or perverse, he has the power to disagree with them and refer the matter to the High Court, which has authority to give the final decision.

The jury consists of nine persons in trials before the High Court, and of an uneven number, prescribed by the local Government, in the mofussil courts. After the hearing of evidence and arguments of counsel on both sides are finished, the judge explains the whole case to the jury, dwells upon the pros and cons of the case, explains the laws applicable to the offence that is alleged to have been committed, and leaves the final verdict to their discretion. The jury adjourn for some time to deliberate among themselves and give either a unanimous or a majority opinion.

(c) *Civil Courts in the District*

The inferior civil courts differ in nomenclature and in other respects in the different provinces, though the essentials are the same. In Bengal, Agra and Assam there are three

subordinate civil courts, the district court, the court of the sub-judges and the munsiff's court. In Bombay there are the courts of the district judge and the assistant judge and the first and second class sub-judges. The officer who presides over the principal court of original civil jurisdiction in each district is known as the district judge. He exercises control over all the subordinate courts within the district, and assigns to assistant judges the disposal of such units as he deems fit. He has also to arrange for the guardianship of minors and lunatics and manage their property. There is no limit to the pecuniary jurisdiction of the district court in original civil plaints. It also works as an appellate court in cases which have been disposed of by the courts of second class subordinate judges.

Subordinate civil courts—district courts

Below the district courts there are judges of two subordinate orders in the Bombay Presidency. There are also small causes courts in important towns. The first class subordinate judge can try any civil suit irrespective of the amount of money involved. He has no appellate jurisdiction whatever. Appeals from his decision lie either to the district courts or to the High Court. The second class subordinate judge has power to try cases in which the sum of money involved does not exceed Rs. 5,000. He also has no appellate powers.

Subordinate judges

A first or second class sub-judge is sometimes invested with the summary powers of a small causes court judge. The jurisdiction of the small causes courts in the presidency towns is limited to cases where the sum involved does not exceed Rs. 2,000, and in other important cities to cases where it does not exceed Rs. 500. There is no appeal from decisions of this court except on points of law and in certain cases which have been specified. Courts of such summary powers are intended to facilitate the recovery of small debts.

Small causes courts

In Bombay no subordinate judge could receive or register a suit in which any officer of the Government in his official capacity was a party. The law has been altered recently. Subordinate judges can now entertain such plaints. Formerly such cases had to be referred to the district courts which alone could entertain them. The Civil Justice Committee of 1924-5 thought that such a restriction resulted in congestion of suits against the Secretary of State or officers of the Government, which the district judge has no time to take up. Many such suits are of a minor character and therefore a relaxation of the restriction was necessary.

Another peculiarity of the Bombay system is the duty given to district judges of managing a large number of estates of minors which are not administered by the Court of Wards. The routine management is done by the deputy nazir. In consultation with him the judge has to carry out detailed supervision over matters connected with the revenue and expenditure of the estates of the minor and over his general health and upbringing.

The district judge and the sessions judge are the same person

It must be noticed that in Bombay the district judge presiding in the civil court is also the person who presides over the criminal or sessions court. The two courts and their jurisdiction are different, but the presiding officer over both is one and the same person. In actual practice, therefore, the district courts, and the district judges because of the combination of civil and criminal functions in their persons, possess extensive powers. They are courts having powers both original and appellate. They are courts having both civil and criminal jurisdiction. Besides, they control all subordinate courts in their districts and to what extent possess certain administrative functions. The district judge's office is therefore an office of importance. It is generally filled by members of the Indian Civil Service. Most of the assistant district judges are junior members belonging to the same service. They perform the duties that are assigned to them by the district judge.

Revenue courts

Side by side with the civil court there also exist what are known as Revenue Courts. They are presided over by officers who are charged with the duty of settling and collecting the land revenue. In questions of assessment and collection, and in purely fiscal matters, the civil courts are generally excluded from interfering. They can, however, take cognizance of all questions pertaining to the title of land, and of rent suits in some of the provinces, particularly in Bengal. The collector constitutes the chief Revenue Court in a district, and appeal from him lies to the divisional commissioner.

(*d*) *Appeals*

The need for an appeal

In the imperfect human world, even a trained judge is liable to err. Sometimes his logic may prove to be faulty and his knowledge defective. He may be unconsciously swayed by obstinacy, prejudice or passion. The conclusions at which he arrives in all honesty and sincerity may be at variance with facts. Some

method has to be devised to minimize the chances of miscarriage of justice which may result from the ineptitude or the fallibility of the judge. The system of appeals is instituted for that purpose.

The court of appeal

An appeal is a petition made by an aggrieved party against the decision of a judge. In the nature of things, it must be heard by a superior tribunal which can alter, reverse or confirm the judgement of the trying court. The judge who hears appeals is expected to have better qualifications and experience. There can be an appeal against an appeal. However, the number of appeals allowed in an individual case must be severely limited. Otherwise, the judicial process would be endless. In India, two appeals are allowed in civil cases and only one in criminal cases. Applications in revision may be made in the latter.

Appeals in criminal cases

An appeal against the decision of a second class or third class magistrate lies to the district magistrate or to any first class magistrate specially empowered by him. An appeal against the decision of a first class magistrate lies to the sessions court. An appeal against the decision of the sessions court lies to the High Court. An application in revision can be heard by the sessions court against the judgement in appeal of a first class magistrate or by the High Court against the judgement in appeal of a sessions court.

Appeals in civil cases

In civil cases, an appeal lies from the second class sub-judge to the district court and a further appeal from the latter to the High Court. An appeal from the decision of a first class sub-judge usually goes to the High Court and a further appeal lies from the latter to the Privy Council. The High Court can call for and examine the record of any proceedings before the subordinate courts.

The Privy Council

The highest appellate court that exists for India is what is commonly known as the Privy Council. This Court has no original jurisdiction, and it functions in England. It is the court which hears final appeals in important cases from all parts of the British Empire and is for that reason looked upon as a common bond which connects the judicial administration of the various parts. An appeal to this body lies from the decision of the High Court sitting as an original or appellate court. In civil cases the amount involved in the dispute must be Rs. 10,000 or more and in criminal cases some substantial

question of law must be involved in order that an appeal to the Privy Council may be allowed. The appeal must lie, not on a point of fact, but on a point of law. Permission must be granted by the High Court to file an appeal to the Privy Council.

It now remains to discuss two important and interesting questions pertaining to the judicial administration of India. One refers to the privileged position enjoyed by Europeans in matters of procedure. The other refers to the principle of separation between the executive and judicial functions of the collector and other revenue officials.

§3. POSITION OF EUROPEAN SUBJECTS

Early days of the Company's rule

Originally, in the earlier years of the East India Company, the only courts which exercised jurisdiction over Europeans resident in India were the courts in the presidency towns. They were Crown courts as distinguished from Company courts. In fact, before 1833, it was laid down that no British subject who was not in the service of the Company was to reside without permission at a distance of more than ten miles from the presidency towns. The abrogation of this restriction in 1834 called forth from the Directors an unequivocal acknowledgement of the principle that Indians and Europeans should be subject to the same judicial control and that there could be no equality of protection where justice was not equally, and on equal terms, accessible to all. Accordingly, Europeans were made amenable to the civil courts outside the presidency towns in 1836. The question of their trial by all the criminal courts was raised in 1849 and in 1857, but no definite conclusion was arrived at. European British subjects were tried for criminal offences only in the Supreme Courts at the presidency towns. With the creation of High Courts in 1861, such trials were referred to them. In 1872 when Sir James Stephen was the Law Member, ordinary criminal courts were empowered to try Europeans, but under a special form of procedure which was then framed.

The Ilbert Bill controversy

As the Indian Civil Service was thrown open to competition and as Indians were allowed to occupy high offices in virtue of their having passed the test, the question arose as to whether they could be prevented from trying European criminals. In 1883 some Indian civilians reached the stage when they would be promoted to be district magistrates or district judges. The

Government felt that any restriction on Indians in the matter of trying European criminals must be abolished. They therefore introduced what has been since known as the Ilbert Bill enabling Indian sessions judges and certain Indian magistrates to exercise jurisdiction over European British subjects. The bill aroused the most vehement opposition from European residents in India. The proposed equalization of the Indian and the European in the eyes of the law was so keenly resented and detested by them that the Government had to bend to the fury of the storm. In 1884 a compromising measure was passed which enabled Indian judges and magistrates to try European criminals and simultaneously gave to the British subject the right to claim a mixed jury, that is, a jury not less than a half of which consisted of Europeans.

Summary of the Racial Distinction Committee

The Racial Distinction Committee, which was appointed after the Montford Reforms to go into the whole question, thus summarized the principal distinctions between the trials of Europeans and Indians in Indian courts.

(1) No British subject could be tried by a second class or third class magistrate or by a first class magistrate who was not a justice of the peace or a district or presidency magistrate or a European British subject.

(2) The jurisdiction of additional and assistant sessions judges was also much restricted.

(3) The sentences that could be passed by a first class or a district magistrate and a court of sessions against European British subjects were specially circumscribed.

(4) Europeans were entitled to claim trial by a jury of which not less than a half would be Europeans or Americans.

(5) They enjoyed more extensive Habeas Corpus privileges.

(6) They had more appellate rights in criminal cases than Indians.

(7) The usual terms of security for good behaviour might not apply to them if they could be dealt with under the European Vagrancy Act.

(8) The definition of a High Court was not so wide in their case.

The recommendations of the Committee were to remove some of these distinctions. The right to claim a mixed jury, that is one composed of not less than a half of the nationality of the accused, has now been extended to Indians and Europeans alike.

§4. THE SEPARATION OF THE EXECUTIVE FROM THE JUDICIARY

The question of the separation of executive from judicial functions has been engaging the attention of Indian politicians for the last half-century. In no part of British India indeed, at the present day, are executive and civil judicial functions combined in the same official. The same may be said of important criminal trials also. The courts of sessions and the High Court which are the superior criminal courts are now presided over by officers who have no executive functions. The disputed question refers to the criminal jurisdiction that is still enjoyed by an executive and revenue official like the collector or deputy commissioner, who, in addition to his civil duties, is also the district magistrate. In that capacity he is vested with extensive judicial authority and power of control over subordinate magistrates in the districts. Similar powers are also enjoyed by assistant and deputy collectors and mamlatdars of talukas.

Criminal jurisdiction of revenue officials

The collector is the officer who is held responsible for the peace of the district and is the superior of the district police from the superintendent downwards except in departmental matters. As a magistrate of the first class he can take cognizance of offences and exercise all powers that are exercised by a magistrate of his grade. He can hear appeals from the magistrates of the second and third class. He can also transfer a case from one subordinate magistrate to another in his district and can call for the record of any case disposed of by them and refer it to the sessions court or High Court. His criminal powers are therefore wide.

A good deal of criticism has been directed for a long time against such a concentration of power. A memorial embodying a criticism of the system was presented to the Secretary of State in 1889 by some distinguished members of the judicial service in India. The grounds of criticism are various. The union of judicial and executive functions is considered to violate the first principle of equity. It is pointed out that the very natures of the two duties differ and require for their proper discharge two distinct types of mental equipment and outlook which cannot be simultaneously possessed by the same officials.

Arguments against the combination of the two functions

In the execution of the civil administrative business assigned to the collectors they may come into conflict with individuals or institutions, and it would be inexpedient and

unsafe to invest them with judicial powers which could be utilized against these. That absolute detachment and aloofness which is necessary for the impartial carrying out of justice cannot be possessed by a magistrate who is also responsible for the peace of the district and who is therefore likely to entertain an unconscious bias in one direction or another.

Nor is the control exercised by the collectors over subordinate magistrates calculated to secure to them an atmosphere of cool impartiality. Sir Henry Cotton, himself a distinguished member of the Indian Civil Service, declares it to be a matter of universal knowledge that 'subordinate magistrates whose position and promotion are dependent on the district magistrate cannot, in such circumstances, discharge their judicial duties with that degree of independence which ought to characterize a court of justice'. Threats like 'the sentence is inadequate; if this occurs again, I shall report your misconduct to the Government' are quoted in his *New India* from the correspondence between a district magistrate and his subordinate.

The combination of the two functions engenders a general distrust about the magistracy and cannot therefore advance the prestige of the executive. The average citizen perceives in this unity of offices a danger to his civic liberty and an opportunity to Government officials for an effective display of vindictiveness. The Public Services Commission of 1916 readily agreed that the union of executive and judicial power in the collector and his subordinates was theoretically objectionable.

Arguments in favour

The arguments in favour of the continuance of the system brought forward by its advocates maintain that in India no active public opinion in favour of the punishment of the wrongdoer has yet sufficiently developed, and it is therefore necessary that the official agency should be endowed with an authority 'proportionate to the weakness of the support which it requires from the community at large'. It is also urged that the speeding up of the machinery of criminal justice cannot be safely entrusted to the already overburdened sessions judges. The advantage of the present system, it is alleged, lies not in the actual exercise of his powers by the collector in numerous cases, for he uses them in comparatively few cases only, but in his holding them in reserve. To deprive the collector of this power would weaken his authority and influence in the district and would strike a fatal blow to peace and order in

the country. Arguments like these are characteristic of the protagonists of the *status quo*.

Criticism

To accuse a whole nation of a dense insensibility to crime and to credit it with a degree of indulgence which might result in the acquittal of hardened criminals only indicates the infinite enthusiasm with which the supporters of the system are possessed and not their capacity for cool and critical judgement. The plea for the maintenance of prestige is equally fallacious. Depriving the collector of magisterial powers is not identical with diminishing the prestige of sovereignty. The separation simply implies a division of labour. It is not necessary to concentrate all the attributes and authority of the Government in one and the same person to preserve the prestige of the ruling power. As the memorial, already referred to, points out, the Viceroy need not lose his prestige because he does not directly exercise the functions of the collector and the district judge. And in the same manner the collector need not lose his prestige if his magisterial powers, the possession of which is apt to lead to miscarriage of justice and to distrust and suspicion in the administration, are transferred to another agency serving under the same Government.

To a student of the constitution the separation of executive from judicial functions appears to be prima facie necessary. That alone can keep the equilibrium between the various aspects of the Government and guarantee perfect liberty and justice to the individual. The raising of the financial bogey is futile. The scheme of separation may or may not involve a vast amount of expenditure. But even if it does, the plea of an increase in expenditure cannot be allowed to throttle such a prime and vital element in democratic polity.

It might be added that in the presidency towns of Madras, Calcutta and Bombay, separation has already been effected. The presidency magistrates are not officers of the Revenue Department. They are empowered to exercise the criminal jurisdiction which in the mofussil is exercised by the collector. The collector in Bombay and other presidency towns is therefore purely a collector of revenue. Sooner or later other collectors also may be called upon to function only in that capacity in all parts of the country.

CHAPTER XXII

LAND REVENUE

§1. HISTORICAL §2. THE EXISTING SYSTEMS §3. CONTROVERSY ABOUT THE PERMANENT SETTLEMENT §4. LAND REVENUE: RENT OR TAX? §5. LAND REVENUE ADMINISTRATION

§1. HISTORICAL

A TAX upon land is one of the oldest forms of taxation. It was the principal source of income for Governments in ancient times. The state claimed a share in the produce of the land. According to the description given by Manu, in ancient India the state's share in normal times varied between one-twelfth and one-sixth of the gross produce, and sometimes rose even to one-fourth if there was any exceptional calamity. Generally, it appears, the revenue was not collected from individuals but from a whole community which was represented by the headman.

Before the Company's rule

With the advent of the Mohammedan power and its expansion throughout India, the system of land revenue collection underwent a change. Raja Todarmal, the famous revenue reformer in Akbar's court, regulated the settlement and collection of the state's share in the income from land. He gave orders for the measurement of land and its classification according to the fertility of the soil. The Government demand was fixed at one-third of the gross produce. It could be commuted into a money payment on the basis of the prices of the previous nineteen years. The settlements were concluded for a fixed period, usually ten years.

Zamindars or middlemen

A number of middlemen and tax-gatherers intervened between the actual cultivator and the supreme power. They agreed to pay a lump sum of money for the portion of the country allotted to them and were armed with large powers to make the necessary collections from the villages. This class of middleman or farmer of revenue later on developed into the zamindar class. As long as the central power was strong, the zamindar was appointed regularly by warrant which declared his duties and the amounts due from him. Usually he had to pay nine-tenths of the total collections and was

allowed to retain one-tenth as remuneration for his labour. Besides, he was allowed some lands free of revenue for himself.

Originally the office of the zamindar was not hereditary. With the decline of the central power, control over the zamindars slackened. They became more and more independent and practically established their sovereignty in the territory under their jurisdiction. Their payments to the central treasury became irregular. From being mere servants charged with the duty of collecting revenue, the zamindars developed into mighty potentates and assumed the position of independent rajas.

Early experiments of the East India Company

The East India Company found itself faced with this situation when it acquired the provinces of Bengal, Bihar and Orissa in 1765. Many experiments were made by Lord Clive and Warren Hastings for organizing an efficient system of land revenue collection, but none of them was successful. There was a good deal of uncertainty in fixing the burden of the Government dues on the proper man. Legal rights had become extremely obscure and complicated. The Company's officers had very little experience or knowledge of Indian traditions. Unfortunately, they were also easily susceptible to gross corruption. The method of assessing the revenue became therefore highly chaotic, and its actual collection was accompanied with such violence and terrorism that the people of Bengal found their position intolerable.

Declaration of the Permanent Settlement

Lord Cornwallis was eager to remove all these grave evils and to place the whole system on a sound basis. He was convinced, after elaborate inquiries, that the only effective solution of the problem would be to introduce a permanent settlement. The Court of Directors gave their sanction to the proposal, and in 1793 the famous announcement was made that the settlement in the then existing territories of the East India Company in India was made permanent. Bengal, Bihar, Orissa, Benares and the Northern Circars in the Madras Presidency came within the purview of this historic declaration.

Its main features

The main features of the system were that the zamindars were declared proprietors of the areas in their possession, subject to the payment of the land revenue; that the assessment then fixed was declared unalterable for ever; approximately ten-elevenths of what the zamindars received in rent from the ryots was to be taken by the state, the remaining one-eleventh being left

to the zamindar. The percentage of Government claims thus fixed was very high. For several years there was widespread default in payment, and lands, the revenue of which had fallen into arrears, were immediately auctioned off. Sale laws were very stringent. In twenty-two years after the permanent settlement one-third or half of the landed property in Bengal is recorded to have been transferred by public sale. Gradually, however, prices rose and the burden of the assessment became lighter and lighter.

Other systems

As several more provinces came under British control, their assessments were gradually reduced to order. The varying circumstances of different tracts and areas were taken into account in introducing at first a tentative system and in allowing it to be crystallized in course of time. Different systems were thus evolved in Bengal, Madras, Bombay, the Punjab, Agra and other provinces of India according to the historical and customary practice obtaining in each part.

§2. THE EXISTING SYSTEMS

Kinds of settlement—zamindari

Land revenue settlements in India are usually differentiated in two ways. The status of the person from whom the revenue is actually demanded forms one basis of division. When the revenue is 'assessed on an individual or a community owning an estate and occupying a position identical with or analogous to that of a landlord, the assessment is known as zamindari'. The individual or the community occupies the position of a middleman who does not cultivate the land himself but rents it out to farmers and tenants. The income from land, in which the state claims a share, is the product of the labour of agriculturists and cultivators. The Government, however, does not hold them responsible for the payment of its duties. The zamindar in charge of the estate is held responsible. He therefore collects money from the tenants and out of it pays the Government revenue. There is no direct contact between the Government and the cultivators of the land.

Ryotwari

When revenue is assessed upon individuals who are the actual occupants and cultivators of smaller holdings, the assessment is known as ryotwari. Here there is no intermediary like the zamindar between the Government and the farmers. Revenue is collected by the officials directly from the tillers of the soil in a large number of instances.

Permanent

Another basis of division of land revenue settlements refers to the time for which the settlement is fixed. In a province like Bengal the amount of the share demanded by the Government is fixed for ever. The contract made in 1793 between the Government and the landlords permanently fixed the sum to be paid by the landlord. There is therefore no question of enhancing the rate or the amount of the Government tax at any future date. Such a system is known popularly as the system of permanent settlement.

Temporary

Where the amount of the state demand is not fixed in perpetuity but only for a definite period, either a year or ten, twenty, or thirty years, at the end of which a revision has to take place, the settlements are known as temporary settlements. In such cases the share taken by the state may be increased or decreased at the end of a stipulated number of years.

It must be remembered that the two divisions are not mutually exclusive. A zamindari settlement might be permanent or temporary. A ryotwari settlement could also be permanent or temporary. Permanence is not an invariable attribute of the zamindari settlement nor would it be correct to suppose that all ryotwari settlements must be temporary. The zamindari in Bengal is permanent; that in Agra or the Punjab or the Central Provinces is not so. There is no instance in India of a ryotwari settlement which is permanent.

Madras

The system in Bengal has been already described. The system prevailing in Bombay and a large part of Madras is ryotwari. In the beginning, attempts were made in Madras to introduce permanently settled zamindari estates as they existed in Bengal, but they met with failure except in a few tracts. After considerable discussion, therefore, Sir Thomas Munro introduced the ryotwari system. The cultivating proprietor is at liberty under this system to relinquish his holding.

Bombay

Most of the territory in the presidency of Bombay was acquired after the downfall of the Peshwas in whose time the practice of farming revenues was in vogue. The British Government abolished farming, but its earlier attempts at a regular settlement did not succeed. A new system was tried in 1835. Soils were divided into nine classes based primarily upon their depth and quality of texture, and fields were assigned to these classes. An assessment rate was fixed for each class after careful investigation into the possible average yield of its soil, allowing

for the uncertainty of rain and other circumstances on which crops and prices depended. The rates were then applied to determine the amount of land revenue due from a particular field. The system was empirical but showed extremely encouraging results. It was soon extended to the whole presidency, and to Sind after it was acquired and annexed to the Bombay Presidency.

Agra

The settlement in Benares was declared to be permanent in 1795. The Directors, however, refused to sanction a similar measure for the province of Agra. The first regular settlement in this part was completed between the years 1833-49. It was concluded, wherever possible, with village proprietors under a zamindari system with joint responsibility. Hereditary tenants or those who had resided in the same village for twelve years were given rights of occupancy. The assessments were fixed at 66 per cent of the rental assets. They were later on reduced to 50 per cent by the Shaharanpur Rules of 1855. The soils were classified and standard rates of rent were fixed for each class.

The Punjab

In Oudh, the talukdars were given full proprietary rights. They contracted to pay a fixed sum of revenue for definite tracts of land. In the Punjab, as in the North-Western Province, there were found bodies of villagers who claimed descent from a common ancestor who had either founded the village or received a grant of it from some ruling monarch. The system of village or mahalwari settlement was therefore adopted in the Punjab. Its term was fixed at 30 years.

The Central Provinces

In the Central Provinces, the zamindari system was introduced in a modified form. Revenues were farmed out to individuals known as patels or malguzars in the time of the Marathas. The villagers, however, were not connected by ties of blood as the villagers in the Punjab or Agra. The revenue farmers soon acquired a quasi-proprietary position. Their claims were allowed by the British rulers and they were held responsible for the payment of land revenue. This settlement is known as the malguzari settlement. It is liable to periodical revision.

Revenue assessed on rent or net income

In no part of India does land revenue now represent a portion of the gross produce. In the United Provinces, the Punjab and the Central Provinces, the Government demand is theoretically based on an economic rent. It is assessed on the amount of rent paid by the tenants to the landlords. In

the case of ryotwari provinces like Madras and Bombay, the assessment is based on the net produce. The figure of the net income is arrived at after deducting the expenses of cultivation from the gross income. Actual calculations might be made to find out the expenses and the net income in particular fields as is done in Madras; or as is done in Bombay, an empirical rate may be arrived at for a certain area by taking into consideration the classification of the soil and the general economic conditions of the tract. This rate is then expressed in a sliding scale and applied to different fields in accordance with their fertility.

§3. CONTROVERSY ABOUT THE PERMANENT SETTLEMENT

R. C. Dutt and Curzon

One of the most disputed questions in the Indian land revenue administration is the desirability or otherwise of extending the system of permanent settlement to the whole of India. The late Mr R. C. Dutt was an ardent advocate of such an extension. He wrote incessantly on the subject and Lord Curzon's Government thought it advisable to review his criticism of the Government policy and to give a reply. Their conclusions were summarized in a resolution which was issued by the Government of India in 1902.

Advantages

The arguments put forward in support of permanent settlement were :

(1) That it would be a protection against the ravages of famine.

(2) That the expense and harassment of the assessment operations would be avoided.

(3) That there would be no temptation to abandon cultivation on the approach of a revision.

(4) That it would result in an accumulation of capital which could be utilized for investment in industries.

(5) That people could lead a fuller and more contented life.

(6) That the immediate loss of revenue would be more than compensated for by the indirect but certain benefit accruing from the system in the future.

Fixity of the state demand would remove any uncertainty in the mind of the cultivator about the amount that he would have to part with. There would be no lurking fear that the investment of his capital and labour in the improvement of the land might be penalized by the Government claiming an increased share just when the improvement fructified. In short, it was contended that from the economic and also from

the social point of view, permanent settlement was the most beneficial arrangement in land revenue administration.

Disadvantages

It was stated on the other hand in opposition to these points :

(1) That the evidence did not justify the description of permanent settlement as a protection against famine. Famine had not been less frequent nor less harmful in permanently settled areas.

(2) That it was part of the deliberate policy of the Government to simplify and cheapen the proceedings in connexion with settlements.

(3) That the policy of long-term settlements was being encouraged.

(4) That over-assessment was not proved to be a cause of the widespread poverty and indebtedness of the agriculturist in India.

(5) That progressive moderation in assessment was the keynote of the policy of the Government.

(6) That improvements introduced by the cultivators or the landlords were exempted from assessment even in temporarily settled areas.

(7) That the Government had to interfere to safeguard the interest of the tenants from the tyranny of ruthless landlords.

(8) That permanent settlements deprived the revenue system of any elasticity which could facilitate an adjustment to the variations of seasons and the circumstances of the people.

Permanence not desirable

That settlement of revenue from land in perpetuity could not be a theoretically sound proposition would be readily admitted by any student of economics. It is unjust, and even ridiculous, to tie the hands of all future generations to a particular course of action which appeared suitable to the present times. It is extremely disadvantageous not to allow the state to have a growing share in the increasing income of the community. Such an embargo makes it financially impossible for the state to undertake any big scheme of public welfare in the light of the most modern conditions. From the point of view of economic science also, it is absolutely unfair to allow the unearned increment from land to be appropriated by a few private individuals. All economic rent ought to belong to the community, and the state as the representative of the community is alone entitled to receive it. It may be added that the introduction of permanent settlement in only one

province of India created inequality and subjected the other provinces to heavier taxation.

Land revenue and income-tax

The Indian Taxation Committee considered the question from various points of view. Several economists have pointed out the iniquity of the incidence of land taxation as compared with that of other taxes. It is suggested that a more proper and just course would be to approximate the system of land revenue collection to that of collecting the income-tax. The question, however, bristles with difficulties, and it is not possible to discuss it in all its bearings in the present work.

§4. LAND REVENUE: RENT OR TAX?

Difference of opinion exists on the question whether land revenue is a direct tax or an indirect tax. The fact that it works partly as a tax on income and partly as a tax on things makes it difficult to state exactly whether it is direct or indirect. However, theoretically at least, the bias is in favour of describing it as a direct tax.

A disputed question

Reference may finally be made to a controversy which has been going on for a long time but which has now ceased to have any great importance in practice. Dispute has centred round the question whether land revenue is a tax or rent. If it is a rent, the proprietorship of the state over all the land in the country is by implication admitted. Those who do not support the doctrine of state ownership look upon land revenue as a compulsory payment made to the state just as all other taxes are compulsory payments.

Indian public opinion has generally taken this view. The Taxation Committee quoted a large amount of evidence in favour of the contention that land revenue is a tax and not a rent. Baden-Powell has been also very guarded in his statement of the position of the British Government with reference to the Indian land system. The zamindars have been expressly acknowledged as the proprietors in large areas. Even in ryotwari tracts, where the cultivator-owners are supposed to be tenants of the state, they enjoy all the privileges of ownership including the right of sale, mortgage and transfer, subject to their payment of the Government dues. As long as these are paid, the 'tenants' cannot be dispossessed of their estate by the theoretical owners. No very great significance therefore attaches to the practical aspect of the question.

§5. LAND REVENUE ADMINISTRATION

Officers who collect revenue

Land revenue became a provincial subject after the Montford Reforms and continues to be so after the Act of 1935. In the Bombay Presidency the work of land revenue collection and administration is entrusted to commissioners, collectors, deputy collectors, mamlatdars and talatis. The collectorate is an important unit. It contains on an average about ten talukas. The collector is primarily a revenue officer.

Survey, settlement and records

There are separate departments and offices for carrying out survey and settlement operations. Records of rights are accurately maintained in every village, giving the names of all persons who are holders, occupants, owners or mortgagees of land, the nature and extent of the respective interest of such persons, and the rent or revenue payable by or to any such persons. Settlement commissioners and superintendents and inspectors of land records are special officers who supervise this aspect of land revenue administration.

CHAPTER XXIII

THE PUBLIC SERVICES

§1. EARLY HISTORY AND ORGANIZATION §2. THE SERVICES UNDER SELF-GOVERNMENT §3. CRITICISM

§1. EARLY HISTORY AND ORGANIZATION

Servants employed by the East India Company

THE East India Company had to appoint a large staff of merchants, factors and writers to carry on its commercial business. When, at a later stage, it began to take an active part in Indian politics, its officers were called upon to play the role of administrators and generals. With the completion of the conquest and the growth of a sense of stability in its new status, the purely military bias of the Company's outlook gradually began to lessen. It became more and more conscious of the obligations of a civilized Government in times of peace. The number of officers in its service began to increase, and the nature of their duties became much more diversified.

Difficulty of recruitment

The recruitment of the proper type of men for service in a state is always a difficult problem. It becomes more so when they have to be sent out to rule over a conquered country. The civil and military services in India are not only required to perform all those functions which similar services perform in independent countries. In addition, it is their responsibility to maintain the supremacy of the conqueror over the vast territorial area which has come into his possession as a consequence of wars, annexations and treaties.

The principles of nomination and examination

Till the middle of the nineteenth century, the only passport to the superior Indian Services was nomination by the Court of Directors of the East India Company. It was a very unsatisfactory system, based as it exclusively was on patronage and corruption, and not on a test of merit. The task of keeping an empire demanded the devoted labours of men of real ability and character. It was not easy to discover such persons merely by the method of undiluted nepotism. After 1853, and more particularly after the abolition of the East India Company, the Indian Civil Service was thrown

open for general competition. An examination was held for that purpose in England and even Indians were permitted to compete for appointments.

Indians and the I.C.S.

The privilege, however, was quite theoretical and academic so far as the people of India were concerned. Its practical utility to them was negligible. In the nature of things, the number of Indian students who could avail themselves of the opportunity thus offered was extremely small. The cost of staying in a distant foreign country with a very high standard of living was prohibitive to the citizens of a poor country; its environment and society were absolutely unfamiliar; and the chances of success were exceedingly uncertain. A pilgrimage to England for appearing at the I.C.S. examination was too great a risk or too great a luxury for clever Indian students of ordinary means. Only one Indian had successfully come out of the ordeal till the year 1870.

Three grades of the Indian services—imperial

Since 1887, the civil services in India have been divided into three grades, namely imperial, provincial, and subordinate. Every important department of the Provincial Government has been organized on the basis of this threefold gradation. Officers of the imperial service stand at the apex. For a long time, recruitment to this grade was confined only to Europeans, though latterly, Indians have been admitted into its ranks in increasing numbers. Men of intellectual calibre and equipment of a high order are supposed to be taken into this service. It supplies the heads of the various branches of administration and may be said to embody the directive energy of the governmental machine. The scales of salary, allowances and promotions, and other conditions of service are extremely attractive.

Provincial and subordinate

Next in importance stands the provincial service. Some of the responsible posts in the administration are allowed to be held by men selected from this grade. They enjoy a certain amount of initiative and latitude, though they have to take their general orders from superiors in the imperial service. Their qualifications and emoluments are lower than those of the latter. At the bottom of the bureaucratic ladder stands the subordinate service. It consists of persons who have only to carry out the orders of their superiors and whose functions are purely mechanical. The scale of salary, etc. is low and the qualifications required are very ordinary. The personnel of both these lower grades of service is chiefly Indian.

The strong position of the I.C.S.

The I.C.S. has always been regarded as the senior of all the Indian Services and as one upon which the responsibility of good government ultimately rests. Posts of general superintendence and control, on the executive, judicial and political sides of the administration, are filled by I.C.S. officers. In fact, many such important posts have been reserved for members of this service. As the Montford Report said, the Indian Civil Service is much more of a Government corporation than purely a civil service in the English sense. It is entitled not only to administer but also to advise. Its officers are habituated to the exercise of authority. In emergencies, they have to depend upon their own judgement. In fact, they are saddled with the heavy responsibility of preserving and managing their Sovereign's domains in a distant land. As the men on the spot who have to shoulder that burden directly, a good deal of discretion and authority are left to them.

§2. THE SERVICES UNDER SELF-GOVERNMENT

Political awakening of India

After the political awakening of India and the growth of self-consciousness among its people, the question of the Services began to be viewed and discussed in an emphatically Indian light. It was asserted as a self-evident proposition that all the Indian Services, high and low, ought to be manned and controlled by Indians, as they are all paid out of the Indian revenues. No proof was necessary for the axiomatic truth that those who are supposed to serve a country must be entirely under the command, guidance and authority of its people. The I.C.S. did not conform to this simple and natural position. Critics often said that its designation was a complete misnomer, because it was neither Indian nor civil nor service. It was, in fact, a powerful hierarchy in which were concentrated the agents of the British masters of India. The same was true of the other superior or imperial Services.

Introduction of democracy

With the announcement of Parliament's decision to grant the right of self-government to the Indian people, the controversy about the status of the Services became more acute and began to wear an altogether different aspect. The matter was discussed at length in the Montford Report and later on in the Report of the Joint Parliamentary Committee which considered the Government of India Act of 1935 in bill form. The

transition from a purely bureaucratic to a partly democratic stage in India's political development was bound to produce its own results. They followed as a natural corollary of certain fundamental assumptions.

The civil servant as a specialist

The civil services in a system of responsible government cannot claim to be the ultimate seat of all governmental authority. They have to bow to the wishes of the legislature and carry out its mandates with scrupulous loyalty. The enunciation of ideals and the shaping of policy are left entirely to Ministers who are the recognized leaders of public opinion. The bureaucracy has to act in the capacity of skilled consultants, technical advisers, or inspecting and reporting officers. Their opinions, based as they would be on long experience, would be entitled to great respect. But they would not be in a position to say the final word.

Anxiety felt by the Services

The new policy introduced by the Act of 1919 and taken a little further by the Act of 1935 created a feeling of profound distrust and anxiety in the minds of the civil servants. It was, of course, never suggested that they should be discharged from employment or that their interests should be adversely affected in any way. On the contrary, the indispensable and precious nature of the services they render was frequently emphasized. Still, these officers fully realized that their old bureaucratic independence and supremacy were doomed under the new order. They would have to be answerable for their actions to the Indian legislatures in proportion to the grant of political power to the Indian people. This prospect of subordination was extremely unwelcome to the British civil servant. He even became apprehensive as to the stability of his position.

Transfer of power to be limited

However, it must be remembered that Parliament did not propose to confer upon India the full status of a Dominion at once. The process is to be gradual, and the advance is to be made in instalments. The transfer of political power to the hands of Indians contemplated by the Act of 1935 is only partial. It is necessarily accompanied by numerous limitations and restraints. A fully self-governing India cannot at the same time be governed by an agency of foreign masters. But Parliament is not prepared to abandon all its authority in respect of that portion of the Indian administrative structure on which the maintenance of its own active control depends.

The underlying principle of the arrangement

The basic philosophy of the whole arrangement is thus embodied in a combination of two inherently incompatible principles of government. The absolute rule of an irresponsible bureaucracy is to be discontinued, at least in what are intended to be autonomous provinces. Yet, some of the most vital services of the state are to be deliberately kept beyond the jurisdiction of popular Ministers and legislatures. Such a defective hypothesis inevitably leads to the formation of that incongruous product which is known as responsibility with reservations or self-government with safeguards. The essential contradiction of such a hybrid concept is too pronounced to be ignored by a student of political science. It threatens to caricature democracy.

Privileges of the Services appointed by the Secretary of State

A part of the Act of 1935—Part X—containing no less than 46 sections is devoted to elaborating the privileges that are guaranteed to the Services under the new constitution. The Secretary of State retains the power of making appointments to the I.C.S., I.M.S. (Civil) and the Indian Police Service. He can also make appointments to any other Service if he thinks it necessary to do so. Rules prescribing the scales of their pay, leave, pensions, medical attendance, etc. have to be made by him. The promotion of such a person, or any order suspending him from office, or punishing or formally censuring him, or adversely affecting his emoluments in respect of pension, is to be made by the Governor-General or the Governor in his individual judgement. A person who feels aggrieved by an order affecting his conditions of service may also complain to those authorities and seek redress. The appeal may be further taken to the Secretary of State. The salary and allowances of persons serving in this grade are non-votable and are charged to the revenues of the Federation or the province as the case may be.

The Lee concessions

The liberal concessions granted to the European members of the superior Services in pursuance of the recommendations of the Lee Commission are to be continued. They include substantial overseas allowances to officials of non-Asiatic domicile, four return passages to officers and their wives and a single passage for each child, from India to England, during the period of service, medical attendance by European doctors, increased pensions to those who have occupied important posts such as an Executive Councillorship or a Governorship, and so on.

Other civil services

Appointments to the other civil services are made by the authorities in India and their conditions of service are also prescribed by them. In the case of the Federation, it is the Governor-General or such person as he may direct; in the case of the province, it is the Governor, or such person as he may direct. No servant can be dismissed from office by an authority subordinate to that by which he was appointed. The existing rights of persons who were already in service before the commencement of the Act of 1935 are not to be adversely affected except by a competent authority. They will have also the rights of appeal against orders which punish or censure them. Subject to all these restrictions, the appropriate legislatures in India will have power to regulate, by Acts, conditions of the civil service, within their spheres.

Control over the defence services vests entirely in His Majesty in Council and the Secretary of State.

Public service commissions

The Act provides that there shall be a public service commission for the Federation and also one such commission for each province. Two or more provinces may agree to have a common body. The chairmen and members of these commissions are to be appointed by the Governor-General or the Governor as the case may be, in his discretion. Similarly, the latter have to determine the number of their members, their tenure of office and conditions of service. At least one-half of the members of a commission must be persons who have held office for at least ten years under the Crown in India. The expenses of the commissions including salaries, allowances and pensions to their staff will be non-votable by the legislatures.

Their duties

It will be the duty of the public service commissions to hold examinations for appointments to the civil services. They are to be consulted, subject to certain exceptions, on matters relating to the methods of recruitment, on the principles in making promotions and transfers from one service to another, on all disciplinary matters affecting a servant, and so on. However, it is not necessary to consult the commissions about the manner in which appointments and posts are to be allocated as between the various communities.

The object of creating a body like the Public Service Commission is to ensure proper recruitment for the country's executive. Public administration cannot be allowed to be demoralized by unscrupulous political interference. A reason-

able amount of independence has to be guaranteed to officers in the performance of their legitimate duties. However, in the peculiar conditions of India, the public service commissions may not be able to achieve all these noble results: Their constitution is faulty. There are numerous statutory encroachments on what ought to be their exclusive jurisdiction. The general nature of their working will be highly bureaucratic, and their outlook may not harmonize with the general trend of public opinion in the country. Ministers may find them to be handicaps which thwart rather than assets which strengthen the progressive working of the state machine. Even an independent commission of this type must imbibe the general atmosphere which pervades a country. If they are in a democracy but are also entirely out of it, their existence is likely to be an undesirable nuisance.

The possibility of their success

§3. CRITICISM

Indian public opinion has viewed the question of the Services with peculiar delicacy. To the Indian, officers of the bureaucracy like collectors and commissioners are the embodiments of the sovereignty of the Raj. Till recently, all the superior grades of the governing bureaucracy were almost entirely manned by Europeans, who were foreigners to the land. The deliberate exclusion of Indians, in spite of pompous Acts of Parliament and the Queen's Proclamation of 1858, was felt by them as derogatory to their self-respect and patriotic sentiment. It was to them a constant reminder of the degree of degradation to which they had been reduced by circumstances.

Exclusion of Indians

The ostracism that was imposed upon the citizens of the country was in itself sufficiently humiliating; the injury was further deepened by the extravagant scale on which remuneration was paid to the foreign agency of servants from the revenue of a poor country. The Governor-General of India stood and still stands unique and unequalled in the hierarchy of officials of the whole world in point of his salary and sumptuary allowances. Even the President of the wealthiest democracy in the world, the United States of America, and the Prime Minister of the mightiest empire in history, the British Empire, pale into insignificance in comparison with him. Members of the Indian Civil Service are also unique in comparison with their brethren in other countries. The monetary drain that results from this top-heavy agency is immense.

Extravagant scales of pay

With the retirement of officials from the country at the end of a long period of service, all the accumulated volume of administrative experience acquired by them also leaves Indian shores..

No scope for Indian administrative talent

But the evil is not only financial. It is moral. As the late Mr Gokhale pointed out, under the atmosphere of foreign domination, a kind of dwarfing or stunting of the Indian race has been going on. The upward impulse, the healthy ambition to rise to the loftiest heights, which is cherished in an atmosphere of democratic freedom is being dried up by continued existence in an environment of abject inferiority. The administrative and military talents which have been the glory of the country's history in the past are bound to deteriorate and finally disappear owing to sheer disuse. This is inevitable in the absence of proper opportunities for their complete or even partial exercise.

The admiration showered upon the marvellous efficiency and machine-like systematic working of a bureaucratic Government might be relished by the conqueror's instinct of self-preservation and self-exaltation. It might even find an echo in those amongst the conquered who can be abstract and objective appreciators of organized efficiency. Yet achievement in this direction is not the only criterion of the success of a hierarchy of officials.

Lord Morley's opinion

Lord Morley was led to imagine that 'our administration would be a great deal more popular if it were a trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious, but rather mechanical, rather lifeless, perhaps rather soulless'. No administration can be progressive or beneficent which crushes out the self-reliance of a people and gives no latitude for the realization of their natural aspirations.

Fifty years ago, a responsible statesman like Lord Salisbury could plainly ask, 'Is there any man who would have the hardihood to tell me that it is within the range of possibility that a man in India should be appointed Lieutenant-Governor or Chief Commissioner or Commander-in-Chief or Viceroy without any regard whatever to his race? It is well to avoid political hypocrisy. . . . There never was a country and there never will be one in which the government of foreigners is really popular. It will be the beginning of the end of our Empire when we forget this elementary fact and entrust greater executive powers in the hands of natives.

Our Governors of provinces, our magistrates of districts and their principal subordinates ought to be Englishmen under all circumstances.' However, sentiments like these are presumed to be out of tune with present-day imperial notions. Therefore they may be taken to have been automatically discarded in the promise of the grant of self-government of a responsible type.

CHAPTER XXIV

EDUCATION

Early History

In the earlier days of the Company's rule no serious attention could be paid to the education of the people on account of the uncertain and restless times. Their efforts were confined to the establishment of a Mohammedan or Sanskrit college of the old type. Warren Hastings and Lord Cornwallis took steps in this direction. In 1782 Hastings founded the first college in Bengal to encourage the study of Arabic and Persian. A similar college was established in 1791 for the cultivation of Hindu laws, literature, religion, etc. in Benares.

New influences were, however, soon at work. A knowledge of English became a means of livelihood for Indians under the rule of the English-speaking people. A demand arose for facilities in English instruction in presidency towns. A struggle was going on between the old and the new schools. The Orientalists wished to maintain the study of the oriental classics in accordance with methods indigenous to the country. The Anglicists urged that all instruction should be given through the medium of the English language and should be in accordance with modern ideas.

Macaulay's Minute

Lord Macaulay was the famous supporter of the Anglicist school. As chairman of the Committee of Public Instruction he recorded his opinion in a separate Minute which vigorously expressed his contempt for oriental learning. His influence was irresistible. Lord William Bentinck decided upon the promotion of European learning as the greatest object of British rule. A resolution of the Governor-General in 1834 plainly declared for English as against oriental education. Lord Auckland's minute in 1839 finally closed the controversy. Since that time, the value of English instruction has been recognized, and the spread of western knowledge has been regarded as one of the duties of the state.

Dispatch of 1854

In 1854 the education of the whole people of India was accepted as a duty of the state. The Board of Directors issued their famous dispatch which is described as the charter of education in India. A number of changes were proposed: (1) the constitution

of a separate department for the administration of education; (2) the institution of universities in the presidency towns; (3) the establishment of institutions for training all classes of people; (4) the maintenance of the existing Government colleges and high schools and a further increase of their number; (5) the establishment of new middle schools; (6) increased attention to vernacular schools for elementary education; and (7) the introduction of a system of grants-in-aid. The vernacular was to be the medium of instruction in lower branches and English in the higher. There was to be perfect religious toleration. The education of girls was to be cordially supported and encouraged by the Government. Sir Charles Wood was mainly responsible for sending this dispatch.

Dispatch of 1859

Another dispatch was published in 1859. It confirmed the principles of the earlier dispatch, but pointed out that elementary education was not being properly promoted. The system of grants-in-aid was not thought desirable or expedient with reference to primary education, and it was recommended that the Government should provide for such education more directly through the instrumentality of its officers. A special cess upon land for primary education was also recommended for the consideration of the Government.

Universities

Universities were established at Bombay, Madras and Calcutta in 1857, in the Punjab in 1882, and at Allahabad in 1887. They were all examining bodies. The growth of schools and colleges proceeded rapidly, and by 1882 there were more than two and a quarter million pupils under instruction. The Commission of 1882 again made useful recommendations and advised increased reliance upon private effort. According to the principles of local self-government, municipalities and local boards were given considerable liberty in the management of schools. In 1898, a review of the situation was made and a searching inquiry followed. A conference of educationists was convened in Simla in 1901. A commission to investigate and report on the working of universities was appointed in 1902. The Indian Universities Act was passed in 1904 to give effect to the recommendations of the commission.

The Act of 1904

The Act specifically recognized the wider functions of the universities including instruction of students and appointment of professors and lecturers and equipment of laboratories and museums. Territorial limits were assigned to each university. Conditions for

the affiliation of colleges were prescribed. A systematic inspection of colleges by the university was established. The term of a senator's office was prescribed to be five years, instead of for life as before. The numbers of senators and syndics were limited, and a majority of nominated members was created. New regulations of the five universities were promulgated in 1905-6. They were all affiliating universities, and any number of colleges could be affiliated to them. They soon ceased to be living organisms, since their constituent parts—the different colleges scattered over the province—contributed nothing to the common life of the university.

A resolution of the Government of India in 1913 recognized the necessity of restricting the area over which affiliating universities had control. The institution of teaching and residential universities was recommended. The strength of communal feeling and the growth of local and provincial patriotism helped in the development of the new policy. Patna, Lucknow, Rangoon, Dacca and Delhi became university centres. So did Benares and Aligarh.

The Calcutta University Commission

The Calcutta University Commission, presided over by Sir Michael Sadler, made their voluminous report in 1919. They recommended a complete reorganization of the system of higher education in Bengal. The introduction of a new type of institution known as an intermediate college was suggested. To such colleges secondary and intermediate education was to be transferred. Most of the recommendations of the Commission were, however, left unheeded when, after the Montford Reforms, the Calcutta University was transferred to the Government of Bengal and action was taken by the latter to modify the affairs of the university in 1921.

After the Reforms

As a result of the Montford Reforms, education became a transferred subject. It is administered by Ministers responsible to the legislature. Great hopes were entertained about the acceleration of the progress of education under the new conditions. They have not been fulfilled for various reasons, chiefly owing to lack of funds. Nevertheless, endeavours were made to combat illiteracy by providing free and compulsory education in primary schools. The Bombay Legislative Council took the lead in the matter by passing a Compulsory Education Act. Other provinces followed by passing similar measures. The general control of the university system has now been placed within the province of the local Governments. Many of them have passed legislation to modify the constitution of the

older institutions or to create new ones side by side. The Allahabad University has been reorganized. The Madras University has been remodelled. New universities have been established at Nagpur and Agra, and a demand has been made for another in Rajputana.

The Bombay Government was not left entirely unaffected. A special committee was appointed to suggest measures of reform, and its report was published. It made various recommendations about the grouping together of colleges in the city of Bombay so as to develop a University area. It recommended an alteration of the constitution of the University in order to make it more democratic and elective. Separate universities for Poona in the first instance, and for Gujarat, the Karnatak and Sind in course of time, were also recommended. The choice of the medium of instruction was left to the universities themselves. Action upon the report was taken by the legislature, which passed the Bombay University Act in 1928.

Bombay University reform

The Act has considerably altered the constitution of the University. The Senate, which till then contained an overwhelmingly large nominated majority has been given a predominantly elective character. In addition to the Chancellor, the Vice-Chancellor, the Registrar and some officials of the Government who are *ex officio* members, the Senate is to consist of members elected by different constituencies. Principals of colleges and University professors elect thirteen members; college professors (including principals) elect twenty; headmasters of schools elect five. Public associations or bodies like municipalities, the Indian Merchants' Chamber, millowners' associations, district local boards, etc. send another fifteen. Registered graduates of the University are allowed to elect twenty-five. Faculties constituted by the Senate have to elect ten. Lastly, the Legislative Council has to send five representatives, one of whom is the member for the University. The total number of elected members thus comes to 93. The number of those nominated by the Chancellor is limited to 40.

Its present constitution

The executive government of the University is vested as before in the Syndicate which will now consist of the Vice-Chancellor, the Rector if any, the Director of Public Instruction, seven persons elected by the Academic Council from itself and nine persons elected by the Senate from those of its members who are not principals or professors or

headmasters. The term of the Syndicate is three years and of the Senate five years.

A new body called the Academic Council has been created to regulate purely educational matters like teaching and examinations, courses of study, scholarships, prizes, etc. It contains representatives of University professors, headmasters and boards of studies in addition to five representatives of the Senate.